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AUTHOR'S PREFACE

As pointed out in the Editor's Introduction to Volume I, "this work on the History of Taxation in Iowa might have been concluded with Chapter XXIII, but for the fact that underlying the Iowa Economic History Series is the conviction that history not only can but should be applied in the solution of the practical problems of social life." Part IV is, therefore, simply a concrete instance of what the author understands by "Applied History."

In the Preface to Volume I the general character and purposes of the work as a whole have been stated. The author is of course aware of the fact that much of the local coloring and some of the notes, references, and appendices would be superfluous if not out of place in an orthodox work on taxation. But since these pages are intended essentially as a contribution to the economic and administrative history of Iowa the author has not hesitated to include much local and comparative data with the hope that it may be of some service in the gradual solution of fiscal problems in this State.

Attention is called to the fact that in suggesting substitutes for the personal property tax the income tax was not included (1) because it is believed that this tax should be a Federal and not a State measure and (2) because the successful administration of such a tax would probably require a degree of centralization which may not be tolerated in Iowa for some years to come.

In addition to the acknowledgements in the Preface to Volume I the author desires to make grateful recognition

of the many courtesies extended by the Historical Department of Iowa through Mr. Edgar R. Harlan and Miss Alice M. Steele. Indeed, it would have been extremely difficult to have written certain chapters of this monograph without access to the valuable collection of newspapers made by the late Curator Charles Aldrich. To Miss Eliza Johnson, Miss Ethyl E. Martin, and Miss Minne B. Graves of The State Historical Society of Iowa the author is likewise grateful for helpful service.

JOHN E. BRINDLEY

THE IOWA STATE COLLEGE OF
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CONTENTS

PART III

THE TAXATION OF RAILROADS

XVI.	THE BEGINNINGS OF RAILWAY TAXATION 1855-1862	3
XVII.	THE TAXATION OF GROSS EARNINGS 1862-1872	13
XVIII.	THE COMPROMISE LAW OF 1870	25
XIX.	THE AD VALOREM SYSTEM OF 1872	56
XX.	RAILWAY TAXATION 1872-1910	85
XXI.	JUDICIAL ASPECTS OF RAILWAY TAXATION	102
XXII.	RAILWAY TAX DISTRIBUTION	115
XXIII.	COMPARATIVE STUDY OF RAILWAY TAXATION	141

PART IV

GENERAL CONCLUSIONS

XXIV.	HISTORICAL ANALYSIS OF THE IOWA REVENUE SYSTEM	171
XXV.	COMPARATIVE STUDY AND THE PROBLEM OF TAX REFORM IN IOWA	213
	APPENDIX A — CONSTITUTION AND RESOLUTIONS OF THE INTERNATIONAL TAX ASSOCIATION	277
	APPENDIX B — STATE TAX COMMISSIONS AND TAX COMMISSIONERS	291
	APPENDIX C — COUNTY ASSESSMENT	365
	APPENDIX D — SUBSTITUTES FOR THE PERSONAL PROPERTY TAX	370
	NOTES AND REFERENCES	389
	INDEX	461

PART III
THE TAXATION OF RAILROADS

XVI

THE BEGINNINGS OF RAILWAY TAXATION

1855 — 1862

The history of railway taxation in Iowa may be divided into three distinct epochs. The first period dates from the year 1855, when railroads first entered the State, and extends to the passage of the gross receipts law of 1862. During this time railway corporations were taxed through the shares of stock in the hands of the individual stockholders. The second period was that of the gross receipts law — enacted as a war measure in 1862, amended in 1868 and again in 1870, and finally replaced by the ad valorem or property tax law of 1872. The third period dates from 1872 and extends to the present time.

In order to understand the beginnings of railway taxation, it is necessary to examine briefly the problem of transportation in pioneer Iowa before the coming of the railroad. The early settlements in Iowa were chiefly along the courses of navigable rivers — a fact quite characteristic of pioneer sections before the era of railroad building. Dubuque, Burlington, Davenport, Bloomington (now Muscatine), and Iowa City were among the earliest settlements in this State. By an act of December 7, 1836, eight counties were defined: Lee, Van Buren, Des Moines, Henry, Louisa, Muscatine, Cook, and Dubuque. By an act of December 21, 1837, the following counties were added: Scott, Cedar, Keokuk, Johnson, Linn, Benton, Jones, Clinton, Jackson, Buchanan, Delaware, Clayton, and Fayette. These acts show clearly how settlement in an early day followed the Mississippi and its navigable tributaries.¹

Although the Iowa country, discovered more than a century before,² had been purchased from Napoleon in 1803 as a part of Louisiana, the whole State remained in possession of the Indians until September, 1832. But in 1833, after the Black Hawk Purchase had been made, the country was thrown open to settlement and pioneers from all parts of the Union came in rapidly. In 1834 the Territorial government of Michigan passed an act organizing the two counties of Dubuque and Des Moines west of the Mississippi,³ which indicates the limited settlement at that time. When the separate Territory of Iowa was finally organized by the act of June 12, 1838,⁴ the interior settlements were still very limited and confined largely to the river courses. While settlers might cross the prairie in wagons they were still obliged to take up land within reasonable distance of navigable streams in order that they might market their produce. The eastern rivers of Iowa thus formed convenient avenues to the Mississippi. They were about the only avenues of trade before the building of railways.

During the whole of the Territorial period poor transportation facilities made settlement difficult. As pointed out by Mr. Jacob Van der Zee, "the Mississippi River and the common roads were the only thoroughfares by which merchandise could be received and produce exported. Moreover, available markets were so distant and wagon transportation so inadequate that overland routes were comparatively little used except for inland trade. The Mississippi River was, therefore, the only adequately available route for exports. But navigation on its waters was closed by ice three months of the year. The products of the northern States were stored up during the fall and winter, awaiting shipment when the water was high in spring."⁵

Besides "overland" there were at least three distinct routes that trade might follow during this early period. These were: (1) New York by sea to New Orleans and

thence up the Mississippi to the Iowa country; (2) New York via Philadelphia, Pittsburg, and the Ohio and Mississippi rivers; and (3) New York via Buffalo, the Great Lakes, and the Fox, Wisconsin and Mississippi rivers. The time required to make this journey was from twenty-four to thirty days, and the cost of transportation from \$3.25 to \$5.25 per hundred weight.⁶ Under these circumstances it required a long, laborious voyage for pioneers to reach the Iowa country; and after they had settled and secured land high transportation rates consumed most of the profits. Hence an improvement of transportation facilities was the one paramount demand of the settlers. Anything capable of meeting this demand would be welcomed by the sturdy pioneers.

The railroad became a practical and efficient means of transportation at an opportune moment for settlement west of the Mississippi. Iowa became a State in 1846 — only a few years after the construction of the first railroad in the United States.⁷ Railway enterprises being still in their infancy, even in the older States of the East, Iowa was not destined to have a railroad for nearly a decade. Communication with Chicago and with eastern markets had to be carried on in the manner described above. But no sooner had the railroad proved practical than the demand of the West for that form of transportation became almost irresistible.

By coming into the Union after railroads had been successfully operated, Iowa escaped for the most part the internal improvement schemes of her eastern neighbors. The efforts made by Iowa along that line were sporadic and of little effect. It is true that Iowa, after being set apart as a separate Territory in 1838, developed a consistent policy of road building which proved of great value to settlement; but this did not include the enormous expenditures for canals and water courses that had characterized some of

the States east of the Mississippi.⁸ The one demand of the pioneers of Iowa was for railroads. Railway communication had been established between Chicago and New York by 1851. Indeed, the middle of the nineteenth century found railroad building well under way in parts of Illinois. A line had been constructed from Chicago to Milwaukee; and Alexander Mitchell was planning the Prairie du Chien division of the Chicago, Milwaukee & St. Paul Railroad. It was an era of enthusiasm for railroad enterprises.

Bearing these facts in mind, one need not be surprised at the large number of petitions that reached Congress from Iowa asking that extensive land grants be made to aid in the promotion of railway enterprises. The State legislature in 1848 passed a joint resolution asking that Congress make a land grant for the construction of a railroad from Davenport to some point near Council Bluffs.⁹ This act was approved January 24, 1848. The same legislature also asked for a grant to aid in the construction of a line from Dubuque to Keokuk.¹⁰ In 1850 rights of way were granted to the following roads: Iowa Western; Dubuque & Keokuk North; Dubuque & Keokuk South; Davenport & Iowa City; and the Camanche & Council Bluffs.¹¹ During the session of the Fourth General Assembly a large number of petitions were sent to Congress.¹² On January 5, 1853, a joint resolution was approved and addressed to the Senate and House of Representatives, asking for a grant of land to aid in the building of a line from Burlington and Keokuk to the Missouri River.¹³ Similar resolutions asked that grants be made for roads from Dubuque to the Missouri, from McGregor to the Missouri near the mouth of the Big Sioux, and also from Davenport via Muscatine to Council Bluffs. Thus it is seen that the pioneers of Iowa had in mind an elaborate network of roads. They were more than willing that Congress should make liberal land grants to all such corporations.

Nor is this all. The movement in Iowa was a part of a great national movement. While United States Senators Dodge and Jones were laboring to secure land grants for railroads in Iowa, they were also striving to secure similar grants for the entire West. "I believe it to be the greatest question which now concerns our nation, and I wish to commit the Government to its construction — ay, and beyond the possibility of backing out — let the cost be double, triple, or quadruple the amount which the bill proposes to appropriate",¹⁴ were the words of Senator Dodge in discussing the question of constructing a transcontinental railroad. He believed in the West as did his colleague Senator Jones. After the discovery of gold in California the demand for a transcontinental line forced itself upon Congress. Senator Dodge in a strong speech pointed out four possible routes to the West which correspond roughly with lines now in operation. A grant of land, however, was not made until July 1, 1862.¹⁵ Of this strong and extensive national movement in favor of railroad building the interest and activity in Iowa formed a necessary and logical part.

The more one studies the advancement of the frontier beyond the Mississippi the more one is inclined to find at least some justification for the extensive land grants made to railway companies by the Federal government. The popular demand for better transportation facilities was irresistible; and in many cases railroads had to precede rather than follow settlement. Under such conditions it was practically impossible to obtain eastern capital without the promise of most liberal subsidies.

In response to the urgent petitions of the Iowa settlers, Congress passed an act known as the Iowa Land Bill, which was approved May 15, 1856.¹⁶ Under this act there were certified to the State to aid the four original land grant roads the following amounts of land: to the Burlington & Missouri River Railroad, 287,000 acres; to the Mississippi

& Missouri (now a part of the Rock Island & Pacific Railroad), 474,675 acres; to the Iowa Central (later the Cedar Rapids & Missouri River), 775,095 acres; and finally to the Dubuque & Sioux City Railroad, 1,226,559 acres. This donation of 1856 was followed by other grants; and in addition to these immense Federal land grants, the people along the lines contributed large sums to aid in the construction of the new roads. Counties and cities contracted heavy debts to aid struggling railway enterprises. The actual extent of gifts by cities, counties, and individuals can, perhaps, never be accurately ascertained. Not even the congressional land grants can be ascertained with absolute accuracy. The following table, taken from the report of the Iowa State Land Office for 1901, gives the latest and most reliable figures showing the actual amount of land which has been granted to the railroads of this State by various acts of Congress.¹⁷ Governor Larrabee in his book on *The Railroad Question* discusses this problem in a chapter entitled "Railroads and Railroad Legislation in Iowa".¹⁸

In this table the names of all roads that have been merged into other lines do not appear. As an example, the Iowa Central, an original land grant road, became a part of the Cedar Rapids & Missouri River line. The tables show that 4,802,878.5 acres have been granted to railroads in Iowa. This amount represents nearly one seventh of the total area of the State.

The subject of railway taxation under the conditions just described would naturally receive but little consideration. Indeed, it was not unusual to exempt roads from all taxation for a certain specified period — a policy which has been adopted in a number of States and is still practiced. What the pioneers of Iowa demanded in the years just preceding the Civil War were railroads at any cost; and at that time little or nothing was thought of their taxation or regulation. The people were willing to make every possible

TABLE XXIII¹⁷

LAND CONCESSIONS BY ACTS OF CONGRESS TO THE STATE OF IOWA
FOR RAILROAD PURPOSES FROM THE YEAR 1856 TO JUNE 30, 1901

DATE OF LAW	NAME OF ROAD	Mile Limits	Acres Certified or Patented for the two years ending June 30, 1901	Acres Certified or Patented to June 30, 1901
May 15, 1856	Burlington & Missouri River	6 and 15		
June 2, 1864	Burlington & Missouri River	20		399,969.71
July 1, 1864	An act authorizing the company to change or modify the location of the uncompleted portion of its line			
March 3, 1865	An act extending the time for completion of road two years.			
Feb. 10, 1866	Resolution extending the time for completion of road			
May 15, 1856	Chicago, Rock Island & Pacific	6 and 15		483,094.36
June 2, 1864	Chicago, Rock Island & Pacific	20	40.00	161,572.81
March 3, 1865	Act extending the time for completion of road two years			
Jan. 31, 1873	Act to quiet the title to certain lands in the state of Iowa			
June 15, 1873	Act to restore certain lands to settlement under homestead law, etc.			
May 15, 1856	Cedar Rapids & Missouri River	6 and 15		921,947.67
June 2, 1864	Cedar Rapids & Missouri River	20	720.14	244,743.10
March 3, 1865	Act extending the time for completion of the road two years			
May 15, 1856	Dubuque & Sioux City	6 and 15		663,023.80
June 2, 1864	Act authorizing said road to change its line			
March 3, 1865	Act extending the time for completion of road two years			
March 2, 1868	Act extending the time for completion of road to January 1, 1872			
May 15, 1856	Iowa Falls & Sioux City	6 and 15		663,023.80
	Act extending the time for completion of road two years			
Aug. 8, 1846 }	Des Moines Valley	5		*502,573.50
July 12, 1862 }				
May 12, 1864	Chicago, Milwaukee & St. Paul	10 and 20		
May 12, 1864	McGregor & Missouri River	10 and 20	403.65	325,669.54
May 12, 1864	Sioux City & St. Paul	10 and 20		407,910.21
Total.....			1,163.79	4,802,878.50

*In addition to this amount, the Des Moines Valley also received cash indemnity for 44,157.66 acres.

sacrifice to obtain roads. The numerous petitions filed with Congress and the State legislature showed an intense popular feeling in favor of transportation enterprise. It was a period of railroad building par excellence. The questions of just taxation and proper rate regulation were to come up in later decades, when economic and social conditions had undergone fundamental changes.

Moreover, the amount of revenue needed to administer the State government in that early time was very small. The total receipts for the fiscal year ending November 5, 1859, were only \$292,234.62 and the total disbursements did not exceed \$266,603.88, leaving a surplus of \$25,630.74.¹⁹ Thus it is evident that it did not require a high rate of taxation to carry on the ordinary business of the government. The general tax rate was low. Railroads were taxed at this time in the same manner as other corporations, that is, through the shares of stock in the hands of the individual stockholders. There was no special law bearing on the subject. The *Code of 1851* provided the following method of taxing certain corporations:

The property of corporations or companies constructing canals, rail-ways, plank-roads, graded-roads, turnpike-roads, and similar improvements, is taxed through the shares of the stockholders; and when any such stockholders are non-resident their interests are to be taxed in this state in the county in which is either terminus of the structure in the state, and to that end the assessor is directed to require the secretary or clerk (or whatever officer of corresponding duties there may be) to render under oath a list of the names and residences of such non-resident stockholders with the number of the shares of each and both the par value and the market value of such stock, but if such secretary or other corresponding officer do not reside in this state the assessor may require the same of any officer residing in the state; and if such officer refuses the shares of non-residents shall be assessed to the company or corporation, and may be ascertained in the best manner within the power of the assessor. In such case the county first listing or assessing is to levy and collect the tax.²⁰

The language of the *Code* is clear so far as it specifies the method of levying and collecting the tax: the property of corporations was to be reached through the shares of stock. The section also makes clear the method of reaching non-resident stockholders; but how the tax received from such non-resident stockholders was to be distributed among the counties in which corporations operated is not explained. This soon came to be a disputed point. The Fifth General Assembly passed an act providing for the distribution of such non-resident tax received by the treasurer of Scott County, which contains the following clause:

The treasurer of Scott county is hereby required to pay over to the treasurer of Cedar, Muscatine, and Johnson counties respectively, a portion of the county tax hereafter collected from the non-resident stockholders of the Mississippi and Missouri River Railroad company for the years 1857 and 1858, equal to the number of miles constructed in each of said counties, so that each of said counties shall receive such portion of the taxes collected from the non-resident stockholders as the number of miles constructed in each county shall be as to the whole length of railroad so constructed.²¹

The method of railway taxation thus outlined was not modified until the meeting of the Seventh General Assembly in 1858. Indeed, the law of 1858 may be considered the first measure passed with any special reference to railway taxation. Moreover, the new law did not change the general method of taxing the roads. They were still to be taxed through the shares of the stockholders; but on the point of distribution the act contained the following:

The county receiving the tax upon the property of non-resident stockholders as therein specified, shall distribute and pay over to the several counties in which any part of such improvement shall be situated, in February in each year, their share of said tax, dividing the same in proportion to the portion of such improvements situated in the several counties.²²

Thus at the beginning of the Civil War period no special method had been devised for taxing railway corporations. A few leading principles, however, are clear. The tax was to be on the shares of stock, the law clearly specifying how such shares were to be reached; the tax was to be distributed among the counties through which the lines passed on the basis of actual improvements; and finally all credits were to be assessed at their true cash value. The value of this law, like any other law, depended upon the efficiency of its administration. It was no doubt fairly well suited to meet pioneer conditions, but the exigencies of the Civil War were soon to demand a readjustment of the tax laws. A separate and distinct method of taxing railway corporations was found to be necessary in order to raise additional revenue.

Statistics showing the amount of taxes paid by railroads prior to 1862 are not available. The amounts were paid to the various counties as a part of the general property tax, and only the State millage turned over to the State treasury. No data therefore exists until the passage of the gross receipts law in 1862 when the whole administration of the tax on railroads was placed in the hands of the State.²⁸

XVII
THE TAXATION OF GROSS EARNINGS
1862 — 1872

At the opening of the Ninth General Assembly the Nation was in the midst of the most critical period of the Civil War. The resources of the loyal States were placed at the service of the Union. Governor Kirkwood sent a most vigorous and patriotic message to the Iowa legislators, calling attention to the necessity of greater revenue.²⁴ The ordinary expenses of State government had to be met, and in addition provision had to be made for the extraordinary expenditures due to the war. It was absolutely necessary to increase the burden of taxation. This meant higher taxes for all—the farmer, the mechanic, and the corporation.

The Governor, impressed with the desirability of efficient administration, emphasized in his message the imperative necessity of enforcing the tax laws. He did not even suggest a change in the method of taxing railroads, although the plan of taxing these corporations through the shares of stock was crude and had never proved entirely satisfactory. It had not worked as a simple and effective method of obtaining revenue from such corporations, and a strong sentiment was already developing in some of the eastern cities, like Dubuque, Burlington, and Davenport, which favored higher taxes on railroads.²⁵ These cities had within their limits large amounts of railroad property, and the people were beginning to feel that this property should not escape its just burden of taxation. Many favored the taxation of the lands granted to railroads and spoke freely of the lavish gifts to such corporations. Radical senti-

ment, however, was confined to a few leading cities. The general public was not destined to hold such views for nearly a decade.

When, however, the general subject of tax revision came up for serious consideration in the legislature it seemed advisable to adopt some more effective means of obtaining revenue from railway corporations than was provided by the law of 1858. The gross receipts law of 1862 was the result. The members of the legislature did not endorse the plan from the standpoint of justice and equality, since the one consideration that seemed to enter into the solution of the problem was that of revenue. Section 16 of the act outlines the whole scheme of railway taxation in these words:

Each Railroad Company in the State shall annually, on or before the first day of February, furnish to the State Treasurer a sworn statement of the gross receipts of their Railroad, without reduction of expenses for the year ending on the first day of January preceding, which said statement shall be sworn to by the Secretary and Treasurer of such company. And the Treasurer of the State shall levy on said gross receipts, a tax of one per centum, which the said Railroad Companies shall pay on or before the 15th day of February, after which time the said taxes shall become delinquent and the same penalties and interest shall attach as on other taxes One-half of said taxes levied and collected as aforesaid, shall be equally apportioned by the State Treasurer to the several counties through which the said roads respectively run, in proportion to the number of miles of main track of road in each county, and shall be paid over by him to the County Treasurer of such county. . . . The tax herein provided for shall be in lieu of all taxes for any and all purposes on the road-bed, track, rolling stock and necessary buildings for operating their road. But other property belonging to such Company, whether personal or real, shall be taxed as property of individuals in the respective counties in which the same may lie.²⁶

A few points in this section should receive special consideration. The statement was to be made and sworn to

by the companies giving the gross receipts of their respective lines — which is also required at the present time, save that the nature of the report has undergone fundamental changes. The rate provided was one per cent, which seems a low rate when we consider that at the present time railroads in Minnesota pay four per cent — but comparisons of this kind have little value when we come to consider the pioneer conditions which prevailed in Iowa at that time. The provision regarding distribution is very instructive.²⁷ Under the previous law the State had received its millage on the property of railway corporations just as on the property of individuals — and the same is true under the law now in operation. But under the gross receipts law, until amended in 1870, one-half of the revenue from railroads was retained by the State, the other half going to the counties “in proportion to the number of miles of main track of road in each county”. As will be seen later this was not satisfactory to the sections of the country possessing large amounts of railroad property.²⁸

Although that part of the law which provides that the tax of one per cent on gross receipts “shall be in lieu of all taxes for any and all purposes on the road-bed, track, rolling stock and necessary buildings for operating their road”²⁹ seems clear enough, it soon came to be a subject of litigation. As the tax was distributed to the counties and the State, no part going directly to the cities, the latter soon claimed the right to tax such corporations. They held that the one per cent was merely in lieu of State and county taxes and did not prevent cities from taxing railroad property within their respective limits — a point which will be considered in a later chapter.

This gross receipts system as provided in the law of 1862 remained in vogue during the Civil War, and for a short time thereafter, without meeting with serious criticism. The people, save in a few populous sections, gave it little

thought. Governor Kirkwood did not mention the subject of railway taxation in his message of 1864. Governor William M. Stone, in his message of January 8, 1866, stated that the laws regulating the assessment and collection of railway taxes, though possibly defective in some respects, had, nevertheless, been eminently successful. Careful observation, he stated, had satisfied him that any attempt to improve the present revenue system by additional legislation would be an experiment of doubtful expediency. "Our financial affairs", said the Governor, "were never in a sounder condition. During the entire period of the war we have levied but two mills on the dollar for State purposes; and have incurred an indebtedness of only \$300,000, which was for military expenditures during the first year of the war." ³⁰

Referring to the railroads, Governor Stone pointed out that "the successful development of the vast resources of this State, and its consequent prosperity and wealth, are largely dependent upon the facilities offered by railway communication. To encourage and foster our Railroad enterprises by every feasible means, is manifestly the part of wisdom. The financial disorders through which the country has passed have crippled the means and retarded the progress of these enterprises in Iowa."³¹ In short, the resources of the State of Iowa, its wealth and prosperity, in the opinion of the Governor, were largely dependent upon railway transportation. The war had retarded these enterprises and it was difficult to obtain foreign capital to invest in them. High freight rates could be remedied, in his opinion, by the building of competing lines, hence the necessity of encouraging the construction of more roads.

Governor Stone doubtless voiced the general sentiment prevailing in the early part of the year 1866; but this attitude was soon to be modified. Between 1866 and 1868 public opinion underwent a fundamental change.³² Nor are

the causes of this change difficult to ascertain. The war was over and a period of reaction followed. Rapidly falling prices, the burden of an enormous war debt, and talk of the final resumption of specie payments all tended to mould a different public sentiment. At the same time the people had paid liberal subsidies to railroads and there came to be a general feeling that such corporations should not be permitted to escape their just share of the public burden. And finally the rate discriminations practiced by the roads tended to shape a public opinion unfavorable to them.

The railroad companies had never taken seriously the provisions of the act of July 14, 1856, conveying immense tracts of land to the four original land grant roads, which stipulated that "said Rail Road Companies, accepting the provisions of this act, shall at all times be subject to such rules and regulations as may from time to time be enacted and provided for by the General Assembly of Iowa, not inconsistent with the provisions of this act, and the act of Congress making the grant".³³ The roads not only seemed to disregard their obligations to the public, but went so far as to maintain that the people had no right to regulate them.

The controversy concerning rate discrimination had commenced to grow in some sections of the State as early as 1866 and even before that date. Much time had been spent during the legislative session of 1866 in discussing whether the State had the power to prevent such discriminations. Nothing definite was done during the session. Discontent increased rapidly, and it soon became evident that there was a strong popular demand both to prevent rate discrimination and to equalize the burden of taxation. The questions of regulation and taxation formed really one great problem.

The forces on both sides lined up for the session of 1868. The right of the people to regulate the roads at all was

questioned by many high authorities. A letter from Mr. John P. Irish, a Democratic member of the House during the Twelfth, Thirteenth, and Fourteenth General Assemblies, explains very clearly the point at issue. Mr. Irish writes as follows:

I entered the contest over the railroad question in Iowa in the 12th General Assembly, of which I was a member, in opposition to the opinion of Attorney General Bissell, favorable to the railroads, to the effect that their franchises were an inviolable contract and that the State could do nothing beyond what was written in the contract. Attorney General Bissell's opinion was based upon the decision in the Dartmouth College case secured by Daniel Webster from the Supreme Court of the United States. As a result of our legislation in Iowa and similar legislation in Wisconsin, the principles of the Daniel Webster case were again carried to the Supreme Court and there it was decided that a decision applicable to the franchise of a corporate eleemosynary institution did not apply to a quasi public corporation. Upon this last decision all of the railway legislation by the U. S. and by the several states has been based.³⁴

With the right of regulation once established there followed the problem of actual regulation. This was not a simple problem. The struggle over regulation resulted finally in the establishment of a Board of Railroad Commissioners. The efforts to secure a uniform system of taxation resulted in the compromise measure of 1872. The two things are a part of the same general problem. Ex-Senator McNutt of Muscatine was one of the leaders against the railroads in both struggles. He has been frequently referred to as the father of legislation for the regulation and equal taxation of railway corporations during his ten consecutive years as a member of the Iowa legislature. He has written a long and vigorous letter explaining in detail the history of this whole period, which merits special attention. After referring to the munificent land grants, amounting in all to nearly one seventh of the total area of the State, subsidies,

bonds, subscriptions, and taxes as free gifts to railroad companies, their almost complete exemption from all taxation for several years, the act of July 14, 1856, conveying the land grants as already explained, in which act the right to regulate such roads was distinctly reserved, and finally the complete disregard and denial of said right of regulation by railway corporations, Senator McNutt continues to outline in detail the struggle against discrimination.⁸⁵

Letters from a number of other members of the Thirteenth and Fourteenth General Assemblies confirm these views. Reference has already been made to the letter from Mr. John P. Irish, who was a leader in the House in matters relating to railway regulation and taxation. The problem at the time was very complex. A heavy war debt meaning increased taxes, a contracted currency, the previous policy of liberal subsidies and land grants, and finally rate discriminations were the elements of the problem. It is necessary to weigh carefully all these factors if one is to form a sane, well-balanced judgment of the railway tax legislation of 1870 and 1872.

Owing to the strength of the pro-corporation forces, the Twelfth General Assembly accomplished but little in 1868. A beginning was scarcely made, although a bill was introduced by the Committee on Ways and Means providing for a progressive rate on the gross receipts of railroads. The time for making reports, however, was changed from February 1st to February 15th, in accordance with the recommendation made by State Treasurer Rankin.⁸⁶ In addition the new act specifically required the roads to make a full statement of "the number of miles of their railroad in each county".⁸⁷ This had, however, in reality been required under the previous act which had provided for a redistribution of one-half the tax to counties on the basis of their mileage.

At the meeting of the Thirteenth General Assembly in

1870 the anti-railroad forces were better organized and had become a power of real significance. Long and at times acrimonious debates were held over the railway taxation bills. The arguments presented in these debates, and the opposing forces that formed the temporary compromise measure will be discussed carefully in the following chapter. The gross receipts system was still retained by the law of 1870; but two fundamental changes were made, the rate and distribution being materially modified. The rate was made progressive, section two reading as follows:

The State Treasurer shall levy on said gross receipts a tax as follows,— viz.: On the first \$3000 or part thereof per mile, one per centum; and on receipts of over \$3000 and under \$6000 per mile, two per centum; and on the excess of receipts over \$6000 per mile, three per centum; which taxes the said railroad companies shall pay on or before the first day of March, after which time said taxes if not paid shall become delinquent, and the same penalties and interest shall attach as on other taxes.³⁸

A greater concession to the demands of the people is to be found in section four, which contains these words:

One-fifth of the taxes levied and collected as aforesaid shall remain in the State treasury to be used in the same manner as the several revenues of the State, and the other four-fifths of said taxes shall be apportioned by the Treasurer of State to the several counties through which the said roads respectively run, in proportion to the number of miles of main track of road in each county, and shall be paid over by him to the treasurer of the county entitled thereto.

As the previous law had provided for the refunding of only one-half to the counties, this meant a marked increase of railroad taxes for the counties and a corresponding decrease for the State. In the *Report of Treasurer of State* for the fiscal year 1870 and 1871, mention is made of the increased portion going to the counties under the new law. The tax levied on the roads in 1869 was \$104,099.50. This

was levied under the old law, hence one-half, or \$52,049.75, went to the counties and the other half to the State. The tax levied under the new law in 1870 was \$186,722. Of this amount the counties received four-fifths, or \$149,377.60, and the remaining one-fifth, or \$37,344.40, was retained by the State. This meant a total income for the counties of \$202,205.17 and for the State of only \$90,171.97. State Treasurer Rankin calls attention to the fact that, although the levy of 1870 was nearly double that of 1869, the amount received by the State was only \$37,344.40 in 1870 as compared with \$52,049.75 in 1869.⁸⁹

Before making a critical examination of the origin and scope of the laws of 1870 and 1872, the attention of the reader is called to the following table of statistics which gives the miles of road, the gross earnings, and the taxes paid by the railroads from the years 1862 to 1870 inclusive.

TABLE XXIV⁴⁰

YEAR	MILES OF ROAD	GROSS EARNINGS		TAXES PAID	
		TOTAL	PER MILE	TOTAL	PER MILE
1862.....	626	\$1,109,346.34	\$1,772.11	\$11,093.46	\$17.72
1863.....	653	1,570,546.55	2,405.12	15,705.46	24.05
1864.....	727	2,553,699.91	3,512.65	25,536.99	35.12
1865.....	847	3,871,783.43	4,572.35	38,717.83	45.71
1866.....	1060	4,118,006.35	3,884.89	41,180.06	38.84
1867.....	1228	5,867,501.92	4,778.09	58,675.01	47.78
1868.....	1448	8,024,931.13	5,541.73	80,249.31	55.42
1869.....	2081	10,409,950.70	5,002.37	104,099.50	50.02
1870.....	2683.82	11,932,352.94	4,447.39	186,722.00	69.59

A study of the above table reveals the remarkable growth of railway enterprises during the Civil War and for the five years following that conflict. It is difficult if not impossible to obtain reliable statistics previous to 1862, and thus make a comparative study. Railroads being taxed through the shares of stock in the hands of the individual stockholders, no separate item appears in the contemporary State reports for railway taxes. In fact such taxes were

collected in the various counties and only a stipulated part of the whole general property tax was paid over to the State.

It will be noted that in 1862 there were already 626 miles of railroad in Iowa. Railroads being introduced in 1855, this meant a general average of about one hundred miles per year. Such a remarkable growth can be accounted for in a large measure by liberal land grants, and still more liberal subsidies. By 1866 there were more than a thousand miles of railroad within the State. In 1869 and 1870 twelve hundred miles of line were constructed, or about three times the total amount built during the Civil War. This is indicative of the marvelous growth of transportation enterprise during the speculative period just preceding the crisis of 1873. It also indicates the efforts of railway companies to finish their lines within the time limits specified in the land grant acts.⁴¹

The figures for gross earnings show a rapid, though not a regular, development. The years 1864 and 1865 were years of rapidly increasing earnings, both absolutely and relatively considered. The year 1866, however, shows a slight decrease of earnings per mile — due in a large measure to the reaction and depressed conditions of the country. The years 1867 and 1868 also disclose a marked increase of both total earnings and earnings per mile. But in 1869 and 1870 there is evidence of a falling off in earnings per mile due to the rapid increase of mileage. This decrease of earnings per mile would tend to substantiate the arguments advanced in 1870 that some branch lines were actually being operated at a loss.⁴² In many cases railway lines preceded settlement and therefore could not be expected to pay until the country through which they passed had reached a certain stage of development. They were frequently the pathfinders of an advancing civilization.

As to the amount of taxes paid by the roads, the total

sum increased every year without exception. The increase was normal from 1862 to 1869 inclusive; but the increase for 1870 was abnormally large. This phenomenal increase, however, was due to the progressive principle introduced by section two of the act of 1870. The rate increased from one to three per cent, depending on the earnings of the road. The table also shows a constant increase of tax per mile, save for the years 1866 and 1869. The slight decrease for 1866 was due to the same forces that produced a falling off of earnings for the same year. The marked decrease of tax per mile for 1869 can be explained by the remarkable increase of mileage, about six hundred miles being added during that year. This resulted in both decreased earnings and decreased taxes per mile. But in 1870, although six hundred additional miles of road were constructed, we note a large increase of taxes per mile, the amount being \$69.59 as compared with \$50.02 for 1869 and \$55.42 for 1868. This fact is manifestly due to the great increase of railway taxes from \$104,099.50 in 1869 to \$186,722.00 in 1870, which in turn is the result of the progressive principle instituted by the law of 1870.

The *Report of Treasurer of State*, dated November 6, 1871, states that "the law passed by the General Assembly at its last session, increasing the rate of taxes on gross earnings where they exceed a certain amount per mile, has increased the amount of tax for the year it has been in force, \$67,396.48 over what it would have been under the previous law."⁴³ Yet even this did not satisfy the popular demand that the property of railway corporations be taxed like that of individuals.

Thus in the period from 1862 to 1872 the existence of war and the consequent financial strain upon the government resulted in the creation of a gross receipts system of taxation, one-half of the proceeds of which was paid into the

State Treasury. Under normal conditions the repeal of the law taxing the shares of stock might have come later; and it is more than probable, in view of later developments, that the ad valorem rather than the gross receipts system would have been established. At any rate, the war was scarcely over before the people, especially in the larger cities, began to demand the local taxation of railway corporations in the same manner as the property of individuals.

XVIII

THE COMPROMISE LAW OF 1870

The decade from 1868 to 1878 was an important one in the industrial history of Iowa. During this time a great struggle was going on for the regulation and equal taxation of railroads, and no less than three important measures were passed by the General Assembly. These were: the railway tax law of 1870; the railway tax law of 1872; and the law creating the Board of Railroad Commissioners in 1878.⁴⁴ In order to understand clearly the ad valorem system established in 1872 it is necessary to make a careful examination of the forces which resulted in the compromise measure of 1870. As in all other general movements it is impossible to give absolute dates; but it is evident that by the year 1868 the forces that finally resulted in the legislation of 1870, 1872, and 1878 were clearly outlined. In fact we find much material on this subject during the legislative sessions of 1864 and 1866. From the very beginning of her Statehood, Iowa has never failed to have at least a small group of men who believed that the State should regulate and control corporations.

The law of 1870, therefore, has its roots far back in the history of the Commonwealth. The motives which led to its enactment, taking shape even during the period of civil strife, are clearly outlined in the debates of the Constitutional Conventions of 1844, 1846, and 1857. Some of the arguments presented in the latter Convention are worthy of careful reflection, showing indeed that only two years after railroads had entered the State a few men foresaw the coming struggle for the control and taxation of transportation corporations.

On January 30th the second section of the Bill of Rights being under consideration, the following amendment was proposed by the Committee:

And no privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed, by the General Assembly.⁴⁵

Mr. Palmer proposed to amend the amendment by making the State liable for damages in case of repeal "unless such privileges or immunities shall have been violated or abused by the person, or persons to whom they may have been granted."

These amendments precipitated a long and instructive discussion. Mr. John T. Clark of Allamakee was strongly in favor of the amendment as reported by the Committee. "The history of our country", he said, "has proven this fact: that corporate bodies with exclusive privileges have been growing upon us; have been intrenching themselves in the strongholds of our government. . . . And I am opposed to the principle that would allow our legislature to grant those privileges and those charters, and to create these corporations without having any power to put any limit upon them."⁴⁶

These ideas were held by a large minority of the Convention. The majority, however, took a different view. Mr. J. C. Hall was unwilling to put the corporations in a position where they could not make contracts without being in danger of having such contracts annulled by a hostile legislature. He thought that the contracts of the government should be enforced as rigidly as the contracts of individuals. The majority who opposed the amendment endorsed Mr. Hall's views on the subject of contracts. Mr. J. F. Wilson made an effective reply to this argument by stating that, in case the amendment were passed, it would simply become a part of the contract and would serve as a notice to all parties acquiring rights under it.⁴⁷

The chief argument against the amendment, however, was

the fear of the majority that it would keep capital out of the State. Iowa was an undeveloped community needing large amounts of capital. The more conservative members of the Convention felt that to insert such a section in the Constitution might jeopardize the business welfare of the State. Mr. W. P. Clark of Johnson County said: "I ask gentlemen to consider how many of the capitalists of the States will put their money into these works [of internal improvement] with such a clause as this in our Constitution? I should regard this amendment to the Constitution as a death blow to every railroad corporation in this State." ⁴⁸

Members of the Convention cited examples of other States like New York and Ohio which had similar amendments and where prosperity prevailed; yet the majority were afraid that capital would be kept out of the State. Mr. John H. Peters moved to strike out all of the committee's amendment to section two of the Bill of Rights, which read: "And no privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly." The question was then taken and Mr. Peters's amendment was agreed to upon division. Nineteen voted for and those against were not counted. ⁴⁹

The matter, however, was again taken up on February 2nd. At that time Mr. George W. Ells proposed an amendment to the second section of the Bill of Rights. The amendment was as follows: "And no special privileges or immunities shall ever be granted, that may not be altered, amended or repealed, by the General Assembly by a vote of two-thirds of the House of Representatives, and also of the Senate." ⁵⁰ The debates on this amendment were prolonged and animated. They cover thirty pages of closely printed matter and present many phases of the question. Nearly every shade of opinion was expressed — from that of Mr. Clark of Allamakee who considered corporations as

“so many stepping stones to aristocratic government” to that of Mr. Daniel W. Price who said that corporations were not “monsters” or to that of Mr. John Edwards who felt that too much should not be left to the caprice of legislatures. One member considered the amendment to be one of “the most important provisions that can be placed into this Constitution.”⁵¹

When the vote was finally taken the arguments that the amendment offered would endanger contracts and keep capital out of the State prevailed. It was rejected by a vote of fourteen for and nineteen against. The large minority was indicative of a strong sentiment in favor of safeguarding the interests of the people against the possible domination of corporate wealth — a sentiment which was to grow even during the war and finally crystallize into the legislation to which reference has already been made.

When the Ninth General Assembly passed the gross receipts law in 1862 there was some sentiment favoring sound legislation in the matter of the taxation and regulation of railroads. But the exigencies of the hour seem to have compelled people to waive views of this character. Revenue was the all important consideration: revenue must be secured. The law was framed on that basis, and it did yield some additional revenue.

But no sooner had the debt, rendered necessary by war, commenced to pile up than taxes also began to increase in a like ratio. Fiscal burdens became heavy, in fact almost unbearable. Nothing changes public sentiment like pressure upon the pocket book. People began to feel that corporations were not bearing their just share — especially the railroads which had received such liberal land grants and subsidies. Such a sentiment was by no means general throughout the State. It did prevail, however, in some sections, and sought expression in legislation.

Although Governor Kirkwood had made no formal recommendations on the subject of railway taxation, bills were introduced in the Tenth General Assembly (1864) providing for the Resumption of the Land Grant of 1856 and also for the taxation of railway property the same as the property of individuals.⁵² The former bill was debated at considerable length during the session. Those favoring resumption believed that it was necessary in order to protect the actual settlers from fictitious claims on the part of the railroad companies. Mr. Wm. Hale of Mills County, who spoke at great length in favor of the bill, pointed out that Congress had passed an act on May 15, 1856, making a conditional grant to the State of certain lands designated by odd numbers, for the purpose of constructing four lines of railroad across the State. By an act of the legislature these lands were conferred conditionally, with all the limitations and restrictions imposed by the act of Congress, upon four railroad companies, which in turn accepted the grant subject to all the restrictions imposed both by Congress and by act of the legislature of Iowa. The grant was conferred upon Iowa, according to Mr. Hale, "as a trustee for the purposes mentioned in the act of Congress, the General Government reserving to itself the right of reversion after ten years if certain conditions were not by that time complied with."⁵³ Here the speaker reviewed with great care the whole history of the several acts of Congress and of the State in relation to the land grant and also the decisions of government officials and the Supreme Court; and in conclusion he maintained that the honor of the State compelled him to favor resumption in order to protect the actual settlers and grantees of the State above the Raccoon Fork of the Des Moines River.

Other members held views similar to those of Mr. Hale who had introduced the Resumption Bill.⁵⁴ The majority, however, did not favor such drastic action. Mr. W. G.

Moir of Hardin County believed that the legislature should endeavor to protect actual settlers as much as possible, but he thought this could be done without placing the State in an attitude of hostility to railroads. He maintained that the railroad interest of Iowa was mostly dependent upon eastern capital and that unfriendly legislation would completely stop railroad construction in the State. "Gentlemen come here", he said, "and ask us to resume in order to protect the honest settler, when in truth and in fact it is this rotten Des Moines Navigation Company that is urging resumption".⁵⁵

Mr. Moir argued that it was unnecessary to resume and that in addition it was unstatesmanlike and unjust. It had been impossible for the railroad companies to complete their lines on account of the financial embarrassment of 1857 and 1858 and the domestic struggle of 1861 to 1863. It would be unwise and unjust to crush them in their infancy by taking away land that legally and equitably belonged to them and by so doing impede the progress of the State.

At the time these debates were in progress, \$400,000 was on deposit in New York to aid in the completion of the "Keokuk, Fort Des Moines, and Minnesota Railroad." Whether this money would be available, according to a Pennsylvania subscriber, depended entirely upon the action of the legislature.⁵⁶

In the face of such conditions the views of the more conservative members of the General Assembly prevailed. The attitude of the majority was well stated by Mr. D. D. Holdridge of Buchanan County who declared that "the Railroads are guilty of wrongs. I would take every proper and legitimate steps to rectify those wrongs, but I would not crush them in their infancy. We are expecting many good things of them. As they progress through the State they raise the value of every acre of land, of every bushel

of wheat, of every pound of pork and beef. They enhance the value of everything we sell, and cheapen everything we buy. With proper encouragement they will soon span the State. Very many beneficial results are to follow their completion. And in spite of the many little annoyances they sometimes subject us to — in spite of the argument that they are soulless monopolies, I cannot believe I could be true to the interests of the State by retarding their progress and crippling their energies, as I believe we should do by unconditional resumption.”⁵⁷

The foregoing analysis of the debates indicates that, while a few men began to feel the need of a more strict control of corporations, the large majority was impressed with the fact that Iowa was yet a wilderness and needed large sums of foreign capital for its development. Most sections were demanding roads and were inclined to oppose any hostile railroad legislation. Nor was it difficult for capitalists to make them feel that such a proposal as the Resumption Bill would prove disastrous to railway interests. In fact there was much truth in the contention of its opponents that the bill was both unjust and unnecessary. Although it was defeated (and doubtless ought to have been defeated) the discussions on the floor of the legislature indicated the existence of certain well marked forces that had already developed in Iowa.

A substitute for the Unconditional Resumption Bill was adopted by a vote of forty-four to thirty-seven, eleven members being absent. The substitute required the railroad companies “to release within ninety days to actual settlers on the disputed Des Moines River lands and also release to the counties all selected Swamp Lands granted by the counties prior to January 1, 1861, and secures indemnity to the Railroad Companies in consideration of the release.”⁵⁸

A bill for taxing the property of railroads the same as the property of individuals is taxed was also before the

legislature at this time.⁵⁹ While the debates on this bill were more limited, the arguments were none the less clearly outlined and reveal essentially the same forces at work as are noted above. The agitation for a complete change in the railway tax law came from only a few localities and could not hope to secure the legislation desired, but it was nevertheless intense. Only a few debates were reported by the current newspapers; but a study of these few discloses the fact that a general discussion of railway taxation was in progress during a considerable part of the session. Mr. T. W. Woolson of Henry County, in the Senate, and Mr. F. L. Buckham of Fremont County, in the House, were able advocates of the measure.

Their views merit at least a brief consideration, partly because of their intrinsic value, but also because of their direct bearing upon the Assemblies of 1870 and 1872. It was held that "all laws of a general nature shall have a uniform operation." This was considered by Mr. Woolson to be a positive requirement of the Constitution. The tax of one per cent on the gross earnings of railroads, he said, amounted to less than one-twentieth of a mill on each dollar of their valuation; while the farmer was paying twenty mills per dollar on the value of his farm. This was certainly not a uniform operation of the taxing laws. Again, it was maintained that the General Assembly should not grant any special privileges. To permit railroads to be taxed on their earnings while other property was taxed according to its value was believed to be a special privilege. Finally, the constitutional requirement that "The property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals"⁶⁰ was thought to prohibit absolutely any special method of taxation for railroad companies. Many members of the legislature in 1869, as in 1870, failed to make a clear distinction between taxation and assessment. The idea that different methods of

assessment may result in equal taxation was not clear in their minds. Thus by the confusing of terms too much was made of the constitutional argument.

Even in 1864 members of the General Assembly spoke of the railroads as monopolies growing wealthy out of the people. The frontier counties had contributed liberally to the building of railroads and now these same counties were weighed down with a heavy burden of debts. They felt a double injustice in the situation: first, their own money had helped build the railroads; and secondly, these same railroads seemed to be evading their just share of the public burdens. To the members from a few of the counties this condition of affairs seemed extremely unjust; and in their speeches they presented almost the same arguments as were made later by men like Senator C. Beardsley of Des Moines County and Mr. John P. Irish of Johnson County.

The bill to tax railroads on the same basis as other property did not, however, fare so well as the Unconditional Resumption Bill. It was advocated only by a small minority. Indeed, such a measure was not destined to be written into law for nearly a decade.

In the meantime other matters of more vital importance absorbed the public mind. The war continued another year; the Confederacy was overthrown; and Reconstruction became the problem of the hour. Then came an era of commercial expansion which was without a parallel in the history of the country. The transportation interests developed by leaps and bounds. In a short time there seemed to be no check upon the growth of capitalistic enterprise. Nor did people think of legal restriction during this period of commercial enthusiasm. It was under such conditions that the regular session of the Eleventh General Assembly was held at Des Moines. It is, moreover, noticeable that the newspapers of this time contain almost nothing along the line of railway taxation. There was, of course, some discussion

of the problem in the General Assembly, along the same lines as in 1864; and there was evidence of a considerable undercurrent of feeling. But the sentiment did not become strong enough to write itself into law. The fact, however, that there was some serious discussion by members on the subject of railroads is made clear by an article entitled *Railroads* appearing in the *Iowa Daily State Register* under date of February 6, 1866. The editorial was written by "An intelligent citizen of one of the Missouri River Counties", and shows clearly the prevailing conservative thought of the time on this subject.

"I regret to see", says the writer, "a disposition on the part of many to legislate against Railroads, on the ground that they are monopolies. If I have any influence with those who are so disposed, I would say to them that the future interests and greatness of Iowa, depend greatly upon the speedy completion of its projected Railroads across the State, and one, two, or three roads from South to North. With all the Southern States legislating to draw capital to develop their resources, and rebuild what the ravages of war destroyed, it seems to me it would be very bad policy for Iowa to drive capital away, and retard its progress by unfriendly legislation. It is certainly sufficiently difficult now to induce foreign capital to build our Railroads, without placing any additional blocks in the way. While the North-West has heretofore had no competition in the direction of emigration, another year it will be far different. The South, with its excellent soil, inviting climate, and undeveloped resources, will attract a large share of emigration. Its political influence is working to this end. Capital stands ready to take that direction, and will do it the moment law and order shall be durably re-established. Against these influences we must operate, build our roads, and see that the great traffic of the Plains now pointing towards us, shall not be changed from its proper channel for want of proper facilities." ⁶¹

The limited discussion on the subject of railway transportation during the session of 1866 seems to have been confined almost entirely to tariff rates. Little attention was paid to taxation. Senator Samuel McNutt of Muscatine was just beginning his long fight against the railroads, and he made a number of speeches during the session on the tariff bill.⁶² No legislation resulted at this time, but the opposition had developed an organization for the future.

When the General Assembly convened in 1868 it is evident that public opinion had changed. No concession of any importance, however, had to be made to the advocates of a general property tax. The railway tax law remained essentially the same;⁶³ for while opposition sentiment was growing, the people in most parts of the State were still crying for more railroads. Conditions, however, were still far from being uniform. In undeveloped sections of the State mass meetings were being held to raise subscriptions to aid transportation enterprise; while in some populous eastern centers other meetings were being held to repudiate railroad bonds which it was claimed had been illegally issued.⁶⁴ What was considered an absolute necessity in one county was felt to be a burden in another. It was difficult, in fact impossible, to frame a law satisfactory to all sections of the State.

In some of the eastern counties the argument was frequently advanced that the tax imposed upon railroads should be set apart for the relief of those counties having railroad bond indebtedness. In an editorial appearing in the *Keokuk Daily Gate City*, February 18, 1870, it was held that the tax on railroads "is a fund, however, that can, with potent equity be used for this purpose."⁶⁵ Obviously such a proposition had no chance of being adopted. It is of interest chiefly because it indicates a phase of thought then existing on the transportation problem of Iowa.

But when the Thirteenth General Assembly met in 1870

it soon became evident that some concessions would have to be made to the members who demanded the abolition of the gross receipts system. Since the session of 1868 the opposition to railroads had rapidly gained in strength. The Democratic party declared in its platform, August 10, 1870, "that we assert the right of the people by legislative enactment, to tax, regulate, and control all moneyed corporations upon which extraordinary rights are conferred by charter".⁶⁶ The Republican party also declared that public lands should not be granted to railroad companies "without ample provision being made to secure their speedy sale at moderate prices, and occupancy upon fair and liberal terms."⁶⁷ Such planks in the party platforms are evidence that public opinion had been vitally changed.

Before examining critically the arguments presented to the Thirteenth General Assembly, it will materially simplify the analysis to pass in review the chief elements of the problem as understood by the voters in 1870 and 1872. The subject should be studied both from the standpoint of the railroad interests and as viewed by the people.

The railroads at that time were operating in a country that was in the first stages of industrial development. They had in no small measure preceded and made actual settlement possible. Some roads were actually operated at a loss, and probably would not have been in existence but for government aid and support. Under these conditions it is not surprising to find railway corporations making a strenuous effort to obtain the minimum rate of taxation. Statistics were presented by the officials of certain roads to the Twelfth, Thirteenth, and Fourteenth General Assemblies, showing that said roads were operated either without dividends or actually at a loss. These arguments were in many cases true and had great weight in shaping legislation.

In the second place the railroads desired a certain uniformity in the method of taxation — at least a uniform

method of valuation was desirable. This uniformity had been supplied by the gross receipts law of 1862, and also by the amended laws of 1868 and 1870. But the growing demand for the ad valorem method of taxation and its application to railway corporations the same as to individuals threatened to disturb the scheme of uniform valuation and substitute in lieu thereof the method of valuation by local assessors. To this the railroads objected; and when it finally became evident in 1872 that the gross receipts system must be replaced by the plan of taxation according to value, the railroads insisted upon uniform valuation by a State board.

The railroads especially desired that expensive terminals be considered a part of the whole line and taxed accordingly. They held that the terminals had value only as a part of the system and that the least expensive mile of road was just as necessary as the most expensive mile. This contention was bitterly opposed by the cities — especially by Dubuque, Muscatine, Burlington, Davenport, and Des Moines — and had much to do with shaping the legislation of 1870 and 1872.

The general attitude taken by the railroads on this question is well explained by a personal letter received from Congressman J. A. T. Hull.⁶⁸ He writes as follows:

My recollection of the railroad matter is that all the best informed men in the legislature desired to distribute the railroad taxes through the different counties, as if local taxes only were levied, the country districts would get an inconsiderable part and the cities would get a larger per cent, but by dividing the whole and distributing the taxes on a mileage basis the country districts would be very largely benefitted. I think the object was to show that the railroad terminals were of no special value without the main road leading to them, and that the mileage part of it was an important part and enabled it to declare dividends. The terminals and valuable possessions in the cities were simply incidents of the railroad and should not receive a greater proportion of the taxes than would go to the country districts.

From the standpoint of the people many considerations seemed to demand a change in the law governing railway taxation. The arguments of the decade preceding the war no longer appealed with the same relative force to the public mind. The contraction of the currency and the agitation for resumption of specie payments tended to cause the burdens of government to weigh heavier on the people and thus indirectly create a demand for increased railway taxation. People felt that there should be no privileged class in matters of taxation. The constitutional provision that "the property of all corporations for pecuniary profit, shall be subject to taxation the same as that of individuals" was believed to be a substantial guarantee of equality. The farmer could not see why a railroad that happened to pass through his farm should not bear its full share of the local burdens the same as his own property. The people of the cities held the same views. In fact the sentiment in the cities was especially strong in favor of local assessment because of expensive terminal facilities.

It is moreover a noteworthy fact that the view now held in practically all of the States, that railway property is a just subject for assessment by a State board, had to be vigorously contended for at that time against the advocates of assessment by local officials. The idea of the segregation of revenue sources by which the State receives all or nearly all of the taxes from railroads and certain other corporations did not exist and was obviously unthinkable under the economic conditions then prevailing in Iowa.

The people also felt that the railroads had been liberally subsidized. At this time practically one-eighth of all the land of Iowa had been granted to them by the various acts of Congress. Towns, counties, and municipalities through which roads passed had contributed large sums to their construction. In many cases local governments were still in debt because of gifts made to railway corporations.

Some of the larger cities had contributed immense sums toward the building and equipment of railroads—a fact which should be kept in mind in any critical study of the laws of 1870 and 1872. These facts have a vital connection with the vigorous demand which the cities then made for the method of local assessment and taxation of railroad property. The general views along this line held by many voters of the time are reflected in the following words of Senator McNutt:⁶⁹

I can say as is recorded in some of my writings that the people of Iowa through their legislatures have always been friendly to the construction of railroads and the promotion of railway interests. In proof of this witness the whole history of our legislature, witness our magnificent land grants, subsidies, bonds, subscriptions and taxes to the amount of five per cent of our entire valuation as free gifts to railway corporations, and yet some of these corporations have cheated us as a people never before were cheated.

In the year 1870 the various conflicting views found expression in legislation. The railroads desired no change. If a change had to come they preferred a modification of the gross receipts tax rather than the introduction of an *ad valorem* system. And so the problem was worked out along this line.

The railway interests, however, seemed to have had the support of a large majority of the legislature and were therefore not obliged to submit to a very drastic change of plan. Nor did Governor Merrill in his message of January 1870⁷⁰ make any vigorous demands. "Among the prominent topics for consideration, at the present session," he said, "will be the proper mode of taxing the property of railroads". The existing law had been drafted for the two-fold purpose of providing a simple basis for taxation and of encouraging the struggling railway enterprises. Without making any positive proposals the Governor called the special attention of the legislature to the report of the State Treasurer.

State Treasurer S. E. Rankin was more pronounced in his views. In his report submitted for the fiscal years 1868 and 1869, he made a strong plea in behalf of a new railway taxation measure which would cause the burden of taxation to rest alike upon the property of all, "upon the property of the railroad company, as upon the property of the farmer, the mechanic, the manufacturer or the merchant". He estimated that under an equal tax system the State would receive \$72,400, in place of receiving the small sum of \$40,203.25. This, however, according to Mr. Rankin, did not represent the greatest injustice. Were the roads taxed like other property the counties would receive \$434,000 rather than the small sum of \$40,203.25. This would make an aggregate revenue for State and local purposes of \$506,800 instead of \$80,406.50. It is clear from a study of this report that some fundamental change of system was sooner or later inevitable.⁷¹

Early in the session of the Thirteenth General Assembly, petitions came in from various parts of the State — especially from the eastern cities — asking that the property of railroad corporations be taxed the same as the property of individuals. The existing method was characterized as "unconstitutional and unjust". On February 27, 1870, a Joint Committee on Railroads met at the Savery Hotel in Des Moines to listen to the presentation of arguments. Attorney H. F. Withrow, counsel for the Rock Island, and other representatives of the railroads were present.

Mr. Washburn, a citizen of Muscatine, was the first to be given audience on the subject. He pronounced the tax on gross receipts virtually no tax at all. Individuals he said were not taxed on gross receipts, and he considered it manifestly unjust to apply one method to individuals and quote a different one to railroad corporations. He declared that "there are in the State thirty millions of railroad property,

if there be fifteen thousand dollars of value to the mile. At one and a half per cent. for an average amount of tax, this would yield a revenue of \$450,000 annually. This is calculated on a property tax. To net an equal sum by a tax on gross receipts would require a tax of four per cent. The system of taxation on gross receipts is erroneous.”⁷²

Mr. Washburn further stated that the present method opened the door to fraud on the part of railway men. He declared that taxation on property was the custom in other States where it had proved a success. “Capital is a proper subject”, said the speaker, “for taxation, but the revenue from that capital is dependent upon business skill and brains, and brains are not taxable.” Colonel Smith asked Mr. Washburn what basis he would employ to obtain the value of the railroads, the latter making the simple and unsatisfactory reply that the valuation could be made on the same basis as the valuation of any other property.

Mr. Campbell from Illinois was the next speaker. The law in Illinois taxing railroads according to their value had been passed in 1855, and was quite similar to the new measure which had been proposed in Iowa. The opponents of the gross receipts system claimed that the Illinois law had proved satisfactory. Mr. Campbell testified before the Committee that the law in his State had not been a success. Jealousies between counties caused confusion, complete lack of uniformity, and attempts to dodge the State tax. He declared gross receipts to be the only satisfactory system, covering not only all tangible property, but also the franchise. In Illinois the aggregate taxes paid to the State did not equal one per cent on the gross receipts. It was a method unsatisfactory both to the railroad and to the people.

Colonel Smith then took the floor and said that during the entire discussion taxation had been confounded with assessments, whereas the two were essentially different. “To as-

sess railroad property like other property", declared the Colonel, "creates confusion wherever tried. There is confusion between counties, and between towns in the same counties. The clerk of LaSalle county, Illinois, states that in that county it takes two clerks one month to make up its assessment. All who have had experience in administering taxation upon railroads agree that to tax gross receipts is the only wise way." The arguments presented by Col. Smith were, indeed, fundamental and are applicable in no small degree to the present railway tax law in Iowa and to similar laws in other States.

On March 10, 1870, the subject of railway taxation was taken up in the House.⁷³ The Committee on Ways and Means made two reports. The bill providing for a continuation of the gross receipts system was the majority report, whereas the bill providing for the taxation of railroads like other property was the minority report. The former bill was introduced by Mr. Russell, and the latter by Mr. Hopkirk.⁷⁴ Thus the issue was defined and the struggle was begun between the advocates of a gross receipts plan and the advocates of the "Hopkirk Bill", which provided for the taxation of railways by the State and all lesser political units through which roads passed on a general property basis.

Mr. John Mahin of Muscatine at once took the floor in opposition to the gross receipts system. He began by discussing the doctrine of equality before the law, holding that the Constitution required all property to be taxed on the same basis. Some forms of property were exempt but that was not true of railway corporations organized "solely for the purpose of making money for their stockholders". Gross earnings in his opinion formed no just basis of taxation, there being no uniformity in the amount of earnings of railroads, a sliding scale was not placed on individual property. If the gross receipts plan was applied to rail-

roads, it ought to be applied to all forms of property; otherwise equality was impossible.

In addition Mr. Mahin maintained that a tax on earnings was a tax on industry which was wrong in principle. A well managed corporation might earn much more than one equally valuable but poorly managed. Besides, in the opinion of the speaker, a tax on earnings put a premium on dishonesty. This was especially true where adjoining States had different systems of taxation. One railroad had three-fifths of its track in this State, but only returned about one-fifth of its earnings for Iowa. In Illinois property being taxed and not earnings, it was possible for lines operating in both States to cover up their gross receipts.

In conclusion Mr. Mahin called attention to the liberal land grants and subsidies and the fact that people had always been friendly to railway corporations. The idea that an equitable system of taxation would keep capital out of the State was, he thought, without foundation. No one had promised the railroads immunity from taxation or regulation. Under the present law railway corporations were entirely exempt from local taxation. Other forms of property were subject to this form of taxation, and no reason existed in his opinion for the exemption of railroads. He closed his speech by maintaining that a tax on the real and personal property of railways was the only equitable plan, the only constitutional method, and the one demanded by the people.

Mr. M. E. Cutts of Mahaska County followed and explained the majority report of the Committee. The views of that body he said appeared to be misunderstood. They favored a higher tax on railroads, he said, but did not wish to cripple the weaker lines. Accordingly, a sliding scale was adopted after ascertaining the cost of operation which was found to vary from three to four thousand dollars per mile. Taking into consideration operating expenses, it

seemed reasonable to the Committee to establish a progressive plan ranging from one to three per cent. On the point of distribution the majority favored one-half going to the counties and the other half remaining in the State Treasury. Some held that more should go to the counties.⁷⁵

Mr. Irish of Johnson County then arose and said that it was the duty of members to represent the wishes of the people. Petition after petition from all quarters of the State, he declared, had been received asking that railroads be taxed on their real and personal property. These demands ought not to be disregarded by the members. In his opinion, they should be written into law. The gross receipts plan gave too much opportunity for clever manipulation of reports where actual earnings might be concealed. The sliding scale especially would offer inducements to fraud and evasion.

The discussion in the legislature was resumed on the fifteenth.⁷⁶ Mr. Hopkirk of Jefferson County continued the debate in defense of his bill. His arguments are perhaps more valuable in showing the sentiment of the time than sound from the standpoint of modern scientific thought on the general subject of taxation. Estimating railroads at \$20,000 a mile, the tax for 1868 in Iowa amounted to only two mills on the dollar, which meant only one mill for county purposes. Jefferson County which had only twenty-five miles of road received under the gross receipts plan only \$400, but under the proposed plan which would tax railroads the same as other property, that county would receive nearly \$6,000. Continuing this same line of thought Mr. Hopkirk stated that "if the system of taxing the gross earnings is the best system, adopt it; if it is right for the railroads it is right for the woolen factory, it is right for the cotton factory, for banks, for foundries, machine shops, flouring mills. If railroads are a benefit to the farmer, so are plow-makers and wagon-makers. They are as useful in their place as the railroads."

In his argument Mr. Hopkirk assumed a farmer having a \$3,000 farm and \$1,000 worth of stock. He also assumed for this hypothetical farmer a gross earnings of \$1,000. A property tax of fifteen mills on said farmer would produce \$60 of taxes, while one per cent on his gross earnings would produce only \$10. This the speaker considered to be the actual result of the plan of levying a gross receipts tax of one per cent on railroads while other property was being taxed according to its value.

A defense of the gross receipts system was made by Mr. James Wilson of Tama, who followed Mr. Hopkirk. He considered that one of the strongest arguments in favor of the gross receipts method was its just distribution. It was a tax graduated according to earnings, the plan he favored imposing a progressive tax varying from one to three per cent. Some roads were actually operating at a loss although they may have cost more to construct than other roads that earned large dividends. In other words a progressive tax on earnings was just and equitable because it was based on ability to pay. Finally, Mr. Wilson held that "some system must be adopted that will not leave the new enterprises and poor paying roads subject to the caprice of local assessors."

Replying to these arguments Mr. Mahin of Muscatine again called attention to the immense land grants and gifts to railway corporations. He said that his county had actually paid more than \$70,000 per mile for every mile of road within its borders. This ought, in his opinion, to give the people a right to tax them, and the State through its legislature ought not to take the right away from the people. This argument was frequently advanced on the floor of both the Senate and the House during the session of the Thirteenth General Assembly.

A new and important consideration was advanced by Mr. John F. Lacey of Mahaska County. The entire State sup-

ports the railroads, he said, and should receive their benefits. Buchanan County had 14,000 people and twenty miles of railroad; Fayette County, 16,000 people and no railroad. It was clear to his mind that Fayette County paid more toward sustaining railroads than Buchanan, but under the pending substitute bill, providing for direct property taxation, the former would receive only the small sum raised by State taxation. "It is necessary to devise some plan by which those counties that have no railroad, but who pay for the support of railroads running through other counties, shall have a fair proportion of this tax. I think the substitute introduced by the committee meets that emergency." Under the Hopkirk Bill only one-tenth would go to the State, while under the Russell Bill one-half would be retained in the State treasury. He considered the latter a more just distribution.⁷⁷

Nor did the arguments of Mr. Lacey on tax distribution stop at this point. The distribution of the railroad tax among the lesser political units was, in his judgment, even more objectionable. All the lesser districts supported the roads, and only a few would receive the benefits under the proposed system. A distribution among counties was less objectionable than among the smaller political units. Thus it is seen that the plea of an unjust distribution was his chief objection to the Hopkirk Bill. The point was well taken; and it disclosed the chief objection to the ad valorem system created in 1872.

On March 17th, discussion being resumed, arguments were made for the Hopkirk Bill by H. O. Pratt of Floyd County, John P. Irish of Johnson County, and John Mahin of Muscatine, and for the Russell (or gross receipts) Bill by N. W. Rowell of Union County, B. F. Keables of Marion County, M. E. Cutts of Mahaska County, C. C. Applegate of Scott County, and Samuel Murdock of Clayton County.⁷⁸ An interesting point of view presented by Mr. Keables

deserves careful attention. It represents an appeal to the farming class as opposed to the cities, which in fact became a basic argument in the compromise measure passed two years later. It was held by Mr. Keables that the farmers and merchants paid taxes through higher railway tariffs. After making clear his point that high municipal taxes meant high tariffs and that the additional benefits would accrue to only a few favored townships through which lines passed, the speaker continued: "Therefore, replies the farmer, I have to sell my wheat ten cents per bushel less, to pay the taxes of those cities below, many of them collecting taxes on roads they do not patronize. Let me repeat that the cities at the termini do not pay the freight on railroads, but it is paid, nine-tenths of it, along the line, and it is the essence of injustice to make my neighbor in Marion county pay a part of the expenses incurred by Lee county in securing some local measure".

The same line of thought was held by Mr. Murdock. He was an attorney, and looked upon the subject from a legal standpoint. That the Hopkirk Bill benefitted some sections and injured others was clear to his mind. This meant lack of uniformity in taxation, which was a plain violation of the Constitution. The constitutional arguments of Mr. Murdock were the results of careful study. He claimed that the advocates of the Hopkirk Bill were supporting a measure that would not be uniform in its operation and therefore could not be constitutional. Section nine of the bill exempted railroad property for a period of time. He said that he believed in favoring weak roads but that such a provision would not give the necessary relief without also working great injustice. "You cannot tax the locomotives in one county, and say that the locomotives in another county shall not be taxed. You cannot impose a tax on a mile of railroad in one county, and then, in the same bill, say that another mile of railroad shall not be taxed in an-

other county; for the very reason that the Constitution provides that 'all laws of a general nature shall be uniform throughout the State'."⁷⁹ If section nine was left in the bill it would not operate with uniformity. If that section were taken out of the bill the very purpose of its advocates would be defeated. Such were the legal views of Mr. Murdock. "I think, Sir," he said in conclusion, "that this one single article is enough to defeat the whole bill. I say when you pass this law you pass a law that is not uniform in its operation."

The arguments of those opposed to the Hopkirk Bill were largely a repetition of what has already been outlined. Rowell and Cutts, however, made out an especially strong case for the Russell Bill. The former held some clear views on the question of distribution, pointing out that a property tax would be unjust to the counties as large amounts of the tax would go to favored townships which ought to go to the county or State. "As a matter of right to the county itself, the tier of townships through which a railroad passes are no more entitled to the assessment on that capital stock than any other township in the county."⁸⁰ He believed that it was unjust to drive "a large amount of assessed property into a particular channel", and that after all the only just thing to do was to frame a law whereby "the entire State will receive the benefits of the taxation."

Mr. Cutts attempted to show that what the people really demanded in their petitions had no reference to method of assessment as such. They desired higher taxes on railroads. This he believed could be secured through the Russell Bill. Alluding to Illinois' experience, he spoke of the low valuations on railway corporations made by the assessors of that State. "The assessors will get together and swear they are going to assess the property at all it is worth, and then immediately go to work and assess it at about one-third of its value."⁸¹ In his opinion the law as

actually operated in Illinois would yield less revenue if enacted in Iowa than the progressive gross receipts bill recommended by the Committee.

The bills were finally put to a vote in the House. The substitute bill was defeated by a vote of fifty-six to thirty-eight. The gross receipts measure was then taken up and passed by a large majority, the vote being eighty-five for and only eight against.

In the Senate two bills had been introduced quite similar to the House bills already examined. They were Senate File No. 32, a bill to continue the gross receipts system, and Senate File No. 161, which was similar to the Hopkirk Bill. These bills were taken up in the Senate for discussion on March 14th,⁸² and a series of able and interesting debates ensued between March 14th and April 1st. At the latter date the bill which had passed the House was then taken up for consideration in lieu of the Senate bills.

The arguments on the Senate bills were in the main a repetition of what had been or was being presented in the lower House. The Senate debates, however, are clearer and more logical, especially the arguments favoring a retention of the gross receipts system. A few valuable additions were made to the points already outlined.

The advocates of a property tax held that railroads were escaping their just share of the tax burden; that they were paying one mill on the dollar, whereas other property was paying ten mills; that no reason existed why a special law should be devised for railway corporations; that railroad corporations did not report their full earnings, thus placing Iowa at special disadvantage as compared with Illinois; that railroads were paying enterprises and no longer needed to be objects of special legislation and public favor; and finally, that land grants and gifts of various kinds had practically equalled the total cost of the lines and gave the people a special right to control and tax them.

Senator McNutt estimated that the railroads should pay \$800,000 in taxes rather than \$80,000. This is doubtless an exaggerated estimate, but it indicates the state of public opinion. In fact Senator Robert Lowry of Scott County made about the same estimate, claiming that "other property pays a tax of about ten mills or about ten times as much as railroad property". The chief criticism of these estimates is that they were based on an overvaluation of railroads, judged from the standpoint of actual earnings. The point erroneously emphasized was cost rather than earnings. One Senator even stated that the fact that certain lines enjoyed no earnings above running expenses was no legitimate reason why they should escape the ordinary tax burdens.

Closely connected with this general line of reasoning is the attitude taken by Senator S. H. Fairall of Johnson County.⁸⁸ He recognized that the roads were not realizing earnings, if such earnings were to be calculated on the large valuation made by his colleagues McNutt and Lowry. He contended that earnings should be estimated not on the total cost of the lines but rather upon the actual cost to the companies. The total value of the roads he placed at \$60,000,000, and of that amount he claimed that \$50,000,000 had been actually donated to the lines, leaving an actual cost to the companies themselves of only \$10,000,000. The railroads had no reason to expect earnings on the \$60,000,000. Whatever merit there may have been in these statements, it is certainly clear that the conditions which prompted them no longer exist.

Senators Robert Lowry of Scott County, John P. West of Henry County, and Charles Beardsley of Des Moines County also spoke in favor of taxation according to value. Senator Beardsley did not believe that an ad valorem system of taxation for railroads would retard the progress of the State. This had not been the case in other States. To

the contention of some members that railway tax legislation was being pressed by the older counties burdened with heavy debts, he replied that "no statement could be more incorrect than this, and no charge more groundless". In his own county they were building railroads rapidly, and his people were greatly interested in the transportation problem.⁸⁴

The arguments favoring gross receipts were ably presented by Senators John G. Patterson of Floyd County and W. P. Wolf of Cedar County. They objected to the proposed property tax for a number of reasons. It based valuation too much on mere cost and not enough on earnings. In addition they maintained that the proposed plan was a complex system lacking in unity; that the distribution provided by it was not equitable; that all the Constitution required was uniformity in taxation and not necessarily uniformity in assessment; and that any just scheme of railway taxation must be based on gross earnings.

The argument of unjust distribution already noted in the House debates was clearly expressed by Senator Wolf. He said that he was "opposed to the substitute because the relief derived from such taxation would be unjustly distributed. It is well known that our local taxes, such as school, road, and corporation taxes, make up the greater portion of the burden of taxation. Now, the substitute proposes to allow the cities and towns along the road to tax the railroad property within their limits for local purposes, while other cities, and towns, and townships, shall pay their own local taxes and also pay their proportion of the bonds issued for the building of railroads, and suffer the inconvenience of being without roads. Now, I propose to raise from the gross receipts as much revenue as others propose to raise by the substitute, and to distribute to the counties at large in which the roads are situated, a just proportion of the taxes. By this means the people who

are taxed for railroad bonds will all be equally benefitted by taxation of the roads".⁸⁵ This very forcible objection to the proposed bill will be referred to in the chapter on railway tax distribution.

Senator Wolf continued to review the working of the Illinois law, which had been in operation fifteen years and had been referred to by the opposition as a wise and successful measure. Mr. Campbell of Illinois had declared before the committee at the Savery Hotel that the Illinois measure had by no means proved successful and satisfactory; that the valuations differed in different counties; that undervaluation to dodge State taxes was the rule; that the aggregate taxes paid did not equal one per cent upon the gross receipts; and that the whole system was so complicated that it required two clerks nearly a whole month to make up the assessment of La Salle County. Senator Wolf stated that the Illinois law produced less revenue on 2500 miles of road than the bill he advocated would produce on only 2000 miles. In the debates in both Senate and House there appeared to be a great diversity of opinion relative to the experience under the Illinois law.

Senator Patterson in his discussion gave special attention to the following points: the distinction between mere assessment as such and taxation; the idea that cost was not a just basis of valuation; and that gross earnings formed the best index of value. Regarding the question of constitutionality, what the Constitution required, according to the Senator, was equality of taxation; and he pointed out that different methods might be used for different classes of property. "Therefore," he says, "the bill does not make a different rule for the taxation of the property of corporations from that for the taxation of individuals; but only makes a different rule for the taxation of different classes of property, whether it be the property of corporations or of individuals. And this rule being uniform throughout the

State such a law would be clearly constitutional.”⁸⁶ It is hardly necessary to observe that these statements are quite in keeping with court decisions and represent sound economic doctrine. The idea of class uniformity in taxation has become a well established principle of Constitutional Law.

As to the proper system of railway taxation, Senator Patterson maintained that there was no way of avoiding earnings in some form. In case one desires to fix a value on railroads, said the speaker, he is obliged to do it on the basis of earnings. “It is on the basis of the earnings and the earnings alone that any just value can be fixed.” On the subject of cost and value his reasoning was also clear. “Some of the roads that have cost the most are relatively worth but little, and have a severe struggle to earn enough to pay running expenses and keep their heads above water, while other roads, the construction of which was comparatively cheap, are doing a large business and paying good dividends.”⁸⁷

On March 22nd the Senate Committee on Railroads, to whom had been referred House File No. 264, reported the same with the following amendment:

The State Treasurer shall levy on such gross receipts a tax as follows — viz: On the first three thousand dollars or part thereof, one per centum per mile; and on the receipts over three thousand dollars and under six thousand, per mile two per centum; and on all receipts of six thousand dollars and over, per mile three per centum.⁸⁸

A minority report was also presented which was signed by Senators Charles Beardsley of Des Moines County, F. T. Campbell of Jasper County, T. Hawley of Webster County, and E. S. McCulloch of Lee County.

On March 31st the bill which had passed the House was again taken up in the Senate. On the question of substituting the Senate bill the vote was twenty-two to twenty-four against such substitution, which meant consideration of the House bill. The principal amendment made was that of

Senator Bennett, who moved to strike out "one-half" and insert "four-fifths" which referred to the portion going to the counties. This amendment was adopted by a vote of twenty-nine to sixteen and became a part of the law as finally passed. After a few other minor amendments had been made the bill finally passed the Senate on April 1st by a vote of thirty-six to nine.⁸⁹

Thus the law taxing railways as enacted in 1870 was an embodiment of the old gross receipts system that had been in vogue since 1862 with, however, the addition of the "four-fifths" clause and the progressive principle as outlined in the previous chapter. At best such a measure could only be a temporary compromise.

Consequently the forces which slowly but surely were coming to demand the regulation and just taxation of railway corporations continued to operate. It must have been obvious to those who could read the signs of the times that any permanent compromise would have to be worked out along the lines of ad valorem rather than gross receipts taxation. In fact the farmers as well as the people of the cities were a unit in demanding the local taxation of railroad property on the basis of value believing this to be a positive mandate of the Constitution. Reduced to its lowest terms, the one vital objection to the gross receipts system was that it did not permit the local taxation of this class of corporations on the same basis as the property of individuals.

A second consideration which is apparent from a careful study of the various arguments presented is the fact that the representatives of the people did not clearly distinguish between assessment and taxation. This was soon to prove a fundamental distinction. While the demand for local taxation was rapidly becoming general, there was no reason in the nature of things why this should also im-

ply local assessment. In other words, State assessment coupled with local taxation might not only be possible but desirable, and thus a fruitful field of compromise worked out on the basis of ad valorem taxation was open to the railroads.

Finally, it should be noted that the progressive principle was adopted in response to the demand for higher taxation much in the same way that the "four-fifths" clause was passed in obedience to the demand for local taxation.

XIX

THE AD VALOREM SYSTEM OF 1872

At the opening of the regular session of the Fourteenth General Assembly in January, 1872, it was evident that a radical change in the method of railway taxation would be unavoidable. There seemed to be an overwhelming sentiment in favor of taxing railroads according to their value. Constant agitation for a number of years had crystallized public opinion and produced a feeling that corporations in general, and especially railroads, were not bearing their just share of the public burdens. Both leading political parties had made the matter a subject of platform resolution.

The Democratic Convention of 1871 adopted the following resolution in regard to the taxation and control of certain corporations:

Resolved, That section 2, article 8, of the constitution of Iowa, which declares that, 'The property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals', should be rigidly and strictly enforced, and that by virtue thereof we demand that railroads and railroad property shall be taxed the same as the farmer and the mechanic are taxed, and we affirm the right of the people by legislative enactment to regulate and control all corporations doing business within the borders of the State.⁹⁰

The platform of the Republican party of the same year was equally clear in these words:

Resolved, That we are in favor of a uniform system of taxation, so that all property within the limits of the State, whether of individuals or corporations, for pecuniary profit, shall bear its just share of the public burdens.⁹¹

In his message submitted in January, 1872, Governor Samuel Merrill had a great deal to say on the subject of railway taxation. The demands of the people had become very urgent and some action had to be taken. After reviewing the general financial situation and referring especially to the high tax rates in some local districts, where as much as three and a half per cent had been levied, the Governor recommended "the repeal of the acts of 1868 and 1870, allowing townships, etc., to tax themselves to aid in building railroads. Under these acts, or more properly that of 1870, the sum of \$1,077,703.38 was levied in that year. It is fair to estimate that an equal amount was voted in 1871; in all over \$2,100,000."² The large gifts to railway enterprises must have materially increased the tax rate in many localities — a cause of discontent which Mr. Merrill proposed to remove through restrictive legislation.

Perhaps the most interesting feature of the Governor's message is the recommendation relative to a proper distribution of railway taxes. It will be recalled that the law of 1870 had apportioned one-fifth of the railway tax to the State and the remaining four-fifths to the counties on a mileage basis. This resulted in great injustice as between counties, according to the views of the chief executive. The total railway tax for the past two years had been \$292,377.14, of which the State had received only \$90,171.88. Under the circumstances the Governor did not hesitate to say that "it is manifest that the counties now receiving the revenue from this source, also enjoy, mainly, the benefits and advantages consequent upon the building of the roads. They are afforded by these arteries the speediest access to the markets of the world, and consequently the best prices for their products. On the contrary, those parts of the country which do not enjoy any of this revenue are deprived of all the facilities offered by these great works of improvement, and are compelled to transport their products long

distances to the railroad lines, and really to pay tribute to the more fortunate localities. I would suggest as a measure of justice to all parts of the State, that the entire proceeds of this tax be paid into the State treasury, believing such the most equitable disposition thereof that can be made.'"³

Finally, Governor Merrill did not recommend a change of system, but advised an increase of rates under the gross receipts plan. Concerning the system then in operation he said that he was "of the opinion, that it is the most practicable method yet devised for the purpose.'"⁴ It became clear, however, quite early in the session that this recommendation would not be enacted into law. In fact on the general subject of railway taxation Governor Merrill was by no means in harmony with the views of a majority of the legislature.

And the same can be said of the new Governor, Cyrus C. Carpenter, who in his inaugural address on January 10, 1872, declared that the constitutional provision that "the property of all corporations for pecuniary profit, shall be subject to taxation, the same as that of individuals" referred to uniformity in taxation and did not make uniformity in assessment mandatory. He concluded by saying that all property should bear its just share of the public burden, but held that this could be accomplished without uniformity in the method of assessment. "If, however, we assess railroads in the same *manner* as other property, a few townships in each county will reap the benefits of all local taxes, and a few towns in the State of all tax upon rolling-stock and other property. For these, with other reasons, it would seem to be unjust to a very large majority of the people of the State, who do not live in townships and counties having railroad advantages.'"⁵

The views of State Treasurer Rankin were very much the same as given in his report for 1870. He declared that the tax paid by railroads bore no just proportion to the

tax paid by other property. He mentioned various methods of taxing railway corporations, namely: on net receipts; on gross receipts; on market value of stocks; or on a valuation of their property. No positive recommendations as to method of assessment were made. His report, however, is a vigorous document favoring an increase of railway taxation.

Early in the session of the Fourteenth General Assembly the subject of railway taxation came up for serious and prolonged consideration. A number of bills were introduced in both the Senate and the House, covering various methods for assessing and taxing railroads. Bills were introduced in the Senate by Burke and Larrabee, and also a substitute for the Larrabee Bill by the Ways and Means Committee.⁹⁶ In the House a bill was introduced by Mr. Gear of Burlington, which became the basis of much criticism on the part of the *Burlington Hawk-Eye*; but the bill which, as amended by the Committee on Railroads, finally passed, was introduced by Mr. Duncombe of Fort Dodge.

The extreme conservatives, who were in a hopeless minority, desired a continuation of the gross receipts law, administered by the Census Board. To some extent they favored increased taxes and a more liberal use of the progressive principle. On the other extreme were the advocates of a general property tax plan, administered entirely by local assessors. There were members who desired such a property tax on railroads, but advocated that the valuation be made by the Census Board. Such a system would mean a very different thing from a complete administration by local assessors. There were still others who advocated the taxation of rolling stock by a State board and the taxation of real estate, right of way, depots, etc., by the local units in which the improvements were situated.

Manifestly the only way to secure the enactment of a law under such conditions was through compromise. The situation presented an excellent field for political manipulation

and log rolling, wherein the special interests of certain classes and sections could be played off against other classes and sections. The methods employed by the railroads in politics have been ably presented by Governor Larrabee, who was at that time Chairman of the Committee on Ways and Means of the Senate and therefore was in a position to know the facts.⁹⁷

The meaning of the Gear Bill is reasonably clear — although the attitude which the courts would have taken on section eight relating to the right of cities to tax railways is by no means certain. Under the provisions of this bill all property situated within the right of way, such as buildings, depots, road beds, bridges, single and double main tracks, was to be listed as real estate in Class "A". In arriving at the valuation of this class of property, it was made the duty of the Census Board to consider the gross earnings per mile of each company liable to taxation under the act. All rolling stock, including tools used in operation, was listed as personal property in Class "B". The unit rule was to be applied by the Census Board in the assessment of both classes of railroad property, the distribution among the various taxing districts of the State being made on a pro rata mileage basis quite similar to the present system. Among other things the act clearly provided that "no valuation of class 'A' shall be assessed by cities and incorporated towns at a higher valuation than that fixed by the board of commissioners [Census Board]."

The bill as framed by Mr. Gear may have given the cities more rights than they now possess: this point is doubtful and is of course merely a subject of speculation. The fact remains, however, that the representatives from the cities quite generally opposed the Gear Bill; and the reasons for their opposition are well stated in an editorial in the *Burlington Hawk-Eye*. The editor mentions five objections to the bill. The first objection, that referring to the distribu-

tion of railway taxes, is central and pivotal. On this point he wrote as follows:

To show how this would operate let us take a case. Suppose a road is 200 miles long, passes through ten counties and costs ten millions of dollars. In one county there is a bridge costing one million, the main depots, offices and machine shops, costing and worth another million, and as many miles of track and road-bed as in any other county, and every foot of ground occupied, rated as other property adjoining, worth two or three times as much, or more even, than similar property in the remaining counties. This is about the case with all roads. They start from one of our large cities, where property is more valuable, and where they occupy much space in the city which would otherwise be taxed as private property, and run through other counties where they have little besides the road-bed, to the other terminus, where, perhaps, they have more property than in intervening counties.

Now, how would this law operate? In the case proposed the ten millions of valuation would be divided among the ten counties, and each would levy taxes upon one million, and the tax at one per cent. would be \$10,000, at two per cent. \$20,000, each county getting the same sum on a very unequal amount of property. What would be the difference if the tax were imposed where property is situated? First, in the county where the larger amount of property is situated, we have the bridge, \$1,000,000, depot and machine shops, \$1,000,000 and a road bed worth twice as much as in any other county. This would show the property of the corporation in one county to be worth \$3,454,545; and the amount in each of the other counties to be \$727,272, and the proportion of tax in each county to be in similar ratio. That is to say, the county which has actually within its limits five times as much property as any other, under this bill, would be able to collect only as much tax as the others. Of course the valuations we give are merely hypothetical, and the proportions will vary with every road. But the disproportion will be in almost every case as great as we have indicated.

The bill proposes to take the tax on property in one county and distribute it among other counties where it is *not* situate. It means that Jefferson county, for instance, shall have about one-third

more tax assessed upon the B. & M. railroad than Des Moines county, because it has one-third more miles of track, though the value of the property in this county is quite four or five times as great as that in Jefferson!

Now if there is any justice or propriety or necessity for such a distribution we confess our inability to see it. It is not only absurd but unconstitutional.⁹⁸

The editor considered the bill unconstitutional, because corporations would not be taxed on the same basis as the property of individuals, a tax being levied on property in Des Moines for the benefit of people in Jefferson. The third point outlined in the editorial refers to the method of assessment. He did not believe in a State Board, but considered that local assessors with a more intimate knowledge of conditions should be entrusted with the task of assessing railway property.⁹⁹ It is hardly necessary to observe that this particular criticism should not be taken seriously. In the next place the editor declared that under the bill framed by Mr. Gear, the bridges across the Missouri and Mississippi would merely be taxed as so much road, whereas under the gross receipts law these bridges had been taxed separate from the road the same as the property of individuals. It was declared that under the proposed law the county of Des Moines and city of Burlington would receive perhaps not to exceed \$100 whereas they had previously received \$8,000.

The final criticism of the proposed bill by the editor of the *Burlington Hawk-Eye* had reference to municipal taxation.

Under a decision of the Supreme Court, delivered in December, 1871, the gross receipts tax was held to be in lieu of State and county taxes and did not refer to taxation by municipalities.¹⁰⁰ For some time this subject had been in litigation, and the court had twice been equally divided. Now that the cities had definitely acquired the right of levying their municipal rates upon railway terminals, it is not

strange that the editor viewed with alarm the possibility of losing that right through the passage of Mr. Gear's bill.

It will be instructive to compare the *Hawk-Eye* editorial with one appearing in the columns of the *Iowa State Register* under date of February 17th. The *Register* editorial is much more conservative in tone, urging a compromise rather than an extreme measure.

A multiplicity of bills have been introduced in the Senate and House, betokening legislation of an unfriendly nature, some of them grossly oppressive to the roads, while others intend to fix a cushion more downy than the common tax payer enjoys. That railroads should be taxed and made to bear an equitable burden of the expenses of the government and protection afforded to life and property, none can with justice deny, nor will any well meaning person set up a claim so utterly unfounded. That they should be taxed the same as the property of citizens, for the same general purposes of support, under rules and regulations that would work no hardship to any corporation, seems to be the idea finding encouraging favor with the Legislature, and an expression in several bills already introduced — those of Senators Burke and Hurley and that of Representative Gear incorporating provisions of this nature.¹⁰¹

Thus, there seems to have been a tendency to favor the general provisions of the Gear Bill as being a measure just alike to the railroads and to the people. Under this measure the weaker roads would be protected against unjust assessment, while the stronger roads would be required to bear a heavier rate of taxation.

But the Gear Bill was not the one to be enacted into law. In fact the author of this measure, after encountering the strong opposition of his own constituents as voiced by the *Burlington Hawk-Eye*, was obliged to change his position and oppose the unitary rule of valuation. On March 8th the Committee on Railroads, to whom was referred House File No. 279 by Duncombe, reported the same back with a substitute which was recommended for passage. This substitute

was based upon the unit rule of valuation, with distribution among the various taxing districts on the pro rata mileage plan.¹⁰²

The opposition bill had been framed by Mr. B. J. Hall of Burlington as an amendment to the committee's bill and introduced the principle of local assessment and local taxation.¹⁰³ It should be noted that the conflict at this time was between the principles embodied in these two bills — the principle of a centralized tax administration, making valuation on a unitary plan, as opposed to the principle of local assessment and taxation. Early in the session the railway interests abandoned all hope of maintaining the gross receipts plan and concentrated their efforts in favor of the unit rule of valuation and a centralized State board of control. Just how said valuation could be made on a unitary plan by a State board remained to be determined later when it proved to be a fruitful field for compromise.

The method of local assessment and taxation was upheld by John P. Irish of Johnson County, B. J. Hall of Burlington, I. Blakely of Davis County, M. A. Leahy of Franklin County, W. A. Stow of Fremont County, and J. W. Green of Scott County. Arguments for centralized control were made by J. F. Duncombe of Webster County, F. M. Davis of Adams County, and F. A. Blake of Buena Vista County. The arguments of Mr. Duncombe are especially clear and comprehensive. He favored a centralized control, unitary valuation, and an apportionment of such valuation among the various political units on a pro rata basis. The various units of government could levy their rates against such valuation the same as on other property; they could not levy their rates on the basis of an arbitrary local valuation. Such a policy, Mr. Duncombe believed, would be destructive to railway enterprise. Expensive bridges, he said, were no advantage to a railroad, and any considerable number of them would render any line worthless. Concerning central

control and valuation, he maintained that such a system was desirable if not absolutely necessary in order to prevent the roads from falling into the hands of local assessors. It was especially impracticable for local officers to assess rolling stock which had no local habitation. "In some counties, the assessment made by local assessors is \$12,000, while in the adjoining counties the assessment as we understand, was \$4,000 per mile on the same road, and the next adjoining county no assessment whatever was made. Such a system of assessment was simply ridiculous."¹⁰⁴ Such were in part the views of Mr. Duncombe who made out a strong case against the method of local assessment.

The remarks of the members favoring a local administration were more numerous and less definite, showing that their case was not so well organized. Mr. Irish of Johnson County was the principal speaker. He held that the committee's bill was unjust in its method of administration and more unjust from the standpoint of distribution. It was especially objectionable to the cities in that their property was diffused through the country districts. "Under such an act a city which may have contributed hundreds of thousands to the construction of a road and its machine shops, and which may have within its limits, protected by its laws and defended by its officers a million of dollars worth of property belonging to that road, is yet compelled to donate that million of dollars valuation, contributed perhaps by its own tax payers, to be shared by each mile of the whole line and is permitted to assess and tax only the paltry mile of track that spans it!"¹⁰⁵ These were the forceful assertions of a man who realized the full injustice of the proposed law to cities. The fact that some of the value spread along the line by the provisions of the bill had actually been contributed by the city made the measure particularly offensive.

Again, the advocates of local taxation were unable to see why a special method of assessment should be devised for

railroads. It was an implication against the purity and integrity of the masses, in the opinion of Mr. Irish and others, to allege that they could not be trusted with the taxation of railway corporations. In the last analysis it appeared to them to be a question of local self-government. Mr. Hall, especially, objected to the unit plan of valuation, claiming that this is "a cunningly devised bill in the interest of the interior districts of the State, to the prejudice of the larger towns on the Eastern border."¹⁰⁶ He thought that a local method of taxation administered by local assessors would obviate this criticism and do justice to the cities.

Perhaps the only comment on the above line of argument that should be made in this connection is, that while the proposed measure would work injustice to the cities, the remedy offered was by no means conclusive. In fact under the previous gross receipts law, the unitary plan for State and county taxes on railroads did not prevent the levy of municipal rates on terminals according to the final decision of the Supreme Court. That the remedy proposed would have proved a failure from the standpoint of assessment has been conclusively demonstrated by the history of railway taxation since 1872. The unfortunate condition in cities, which was seen and clearly stated by a number of members, was, however, destined to exist and, indeed, still continues to exist.

On March 9th the amendment of Mr. Hall was put to a vote in the House and was defeated, the vote being twenty-five for and sixty-two against it.¹⁰⁷ The twenty-five members supporting the amendment came almost to a man from counties having large cities, and a large per cent came from the eastern part of the State — Dubuque, Lee, Muscatine, and Jefferson counties being especially well represented.

Before the committee's bill came to a vote on March 13th, many additional amendments were proposed, some being

adopted and others rejected. It is a significant fact, however, that all amendments which would tend to destroy the unit plan of valuation or the scheme of distribution on a mileage basis were promptly voted down by large majorities. Mr. Green moved to amend section six as follows: "And the taxes collected under this act shall be proportioned as the value of taxable railroad property in each city or incorporated town is to the whole taxable railroad property within the limits of such county." This amendment would have resulted in the local taxation of railway terminals and therefore did not prevail.¹⁰⁸

The following day Mr. Green moved this proviso after section twelve which indicates the close connection between the taxation and regulation of railway corporations: "That no provision of this act shall be construed to prevent any city or incorporated town in this State, having railways within their corporate limits, from assessing and levying taxes on any and all real estate belonging to any railroad where such real estate is situate outside of the right of way of any such railroad; and for the purpose of preventing the railways in this State from exacting the amount of taxes levied under this act from the people by onerous charges on freight." Other sections dealing with the subject of regulation were also added, but the entire proviso was voted down by a decisive majority.¹⁰⁹ The bill was then ordered engrossed for a third reading.

Before being put to a vote, however, Mr. Campbell moved to have the bill sent back to the Committee on Railroads with instructions to amend section three dealing with the method of valuation, and Mr. Gear moved additional instructions concerning the regulation of freight rates. These motions were also rejected.

Finally, Mr. O'Donnell offered the following amendment as a rider to the bill:

Provided, that the census board shall value no road for taxable

purposes at less than three thousand dollars per mile, or more than fifteen thousand dollars per mile; and whenever the gross earnings of any road within the limits of this State exceed five thousand dollars per mile, it shall not be assessed at less than eight thousand dollars per mile.

And provided, that this act shall not prevent the levy and collection of taxes upon the real estate of railroads in cities and towns for the improvement of streets, alleys, and places, and other similar improvements bordering upon such real estate.

This amendment being defeated,¹¹⁰ the committee substitute to House File No. 279 was placed upon its passage and adopted by a vote of seventy-five to eighteen.¹¹¹ The eighteen members voting against the measure represented the counties of Lee, Davis, Jefferson, Dubuque, Des Moines, Washington, Scott, Johnson, Delaware, Jackson, Fremont, Cedar, and Van Buren — thus showing the sectional character of the vote.

Mr. Gear in order to placate the opposition of his constituents offered a protest against the bill for the following reasons:

1st, That it is inequitable in its provisions to the counties having railways within their limits in that it puts all the property, without the right of way, into the hands of men who cannot from the nature of the case fix proper valuation on the same.

2d, That it is inequitable and unjust to the cities in this State having railways within their limits, from the fact that on the cities is thrown the burden of protecting railway property within their limits, as put forth in the opinion of the Supreme Court of this State.

3d, We protest against the passage of the bill on account of the unjust legislation as put forth in section nine of the bill.

4th, We protest against the whole bill as being unjust, and in our judgment, unconstitutional.

5th, That the bill we believe to be a delusion, and that it is in the interests of the railroad more than the people.

This protest was signed by eleven members of the House

who had voted against the bill. A second protest against the adoption of the ninth section which was the retroactive provision of the bill was signed by nine members of the House. It was declared in this protest that "the legislature has no right to exempt railroad property from any kind of taxation to which the property of other citizens is liable", and that this particular bill "exempts railroad property from taxation for township and municipal purposes, in violation of the constitution, as has been decided by the Supreme Court in its late decision on that subject."¹²

Some of the eastern cities were vehement in their denunciation of the measure, attributing its passage to the political jobbery of corporate greed. The *Burlington Hawk-Eye*, the *Davenport Gazette*, and the *Daily Gate City* were especially violent in their attacks upon the men who had been responsible for the passage of the bill. As indicative of the attitude of the larger cities in 1872, the following editorial from the *Burlington Hawk-Eye* is both interesting and suggestive. Entitled *The House Bill of Abominations*, it appeared under date of March 16th in these words:

In our daily issue of February 8th [3rd], we printed the text of the bill introduced by Mr. Gear, of this county, to provide for the taxation of railroad property within this State. We also took occasion to give our opinion on the features of his bill, and we think we made it clear to the understanding of all, that the bill instead of being an improvement upon the existing legal abomination — instead of leaning even a little toward the rights of the people, in the matter of taxation, would, if adopted, have placed them in a worse position than if no charge were made. In our issue of the 14th, inst., we published the bill which has since passed the House of Representatives by a vote of 75 to 18. This last bill is Mr. Gear's, in substance, modified in form, with the addition of a *release of all taxes hitherto assessed by local authorities*, under the law as it stands, and prohibiting the collection of such lawfully assessed taxes! Of course this bill suits the railroad corporations. Of course it was passed in their interests and at their dictation. And after

all the talk among the honest and intelligent members of the House, we find four-fifths of the members doing just exactly what these rapacious monopolists tell them to do!

How this bill will operate if the Senate should imitate the example of the House, is explained in a letter from the Mayor of Davenport, and published in the *Gazette* of the 14th. The Mayor states that taxes have been assessed upon railroad property in that city for several years, that they still remain unpaid, that the Supreme Court (by some accident, we suppose), has decided that the taxes may be duly collected; and, that they now amount to \$30,000; and this sum of legally assessed taxes in *one city*, is deliberately voted into the pockets of railroad corporations by men who profess to be representatives of the people! Besides this absolute donation of money belonging to Davenport, and of a great many times that amount belonging to other cities in the State,—some, we do not know how much, to Burlington—the provisions of the law will only permit a very small portion of these city taxes to be assessed and collected in [the] future.

Hereafter, if this bill of infamies is enacted into law, city taxes can only be levied upon the number of miles of '*main track*' within their limits, at a valuation to be fixed by the State Board,—which valuation some of the wise men in the House suggest should be \$4,000 or \$5,000 per mile. Under this plan, though the railroad has a million dollars worth of property in Burlington, it could not be assessed for over one mile's valuation, whatever that might be! That is the kind of law our representatives in the House propose to give us, and that is the mode in which they propose to carry out the provision of the constitution which declares that '*the property of corporations for pecuniary profit shall be subject to taxation, the same as that of individuals.* [']

The Mayor of Davenport inquires, 'Does that Legislature represent *the people of the State of Iowa or the railroads of the State of Iowa?*' And he adds — 'are its members trying to earn their \$5 per day and the approval of their constituents, or are they voting according to the dictates of the utterly *corrupt* and *unscrupulous* lobby of said railroads?

I think we have a right to *know*, if possible, what means are

brought to bear by said companies to so *change* the views of members after they have taken their seats.

If the present Legislature will so far *disregard* the resolutions of the platforms upon which it was elected, as to let the railroad question *entirely alone*, we shall be getting off cheap; but if it undertakes to carry them out according to this sample, there will be *nothing left* for the next General Assembly to *sell* itself for.' ¹¹³

That is a pretty plain statement of what Mayor Bills thought of the House before it finally passed the bill of a thousand infamies, which no member was idiotic enough to suppose was not, in some mode, direct or indirect, bought and paid for by the corporations in whose interest it was concocted, and which will save such immense sums by its enactment into law. There is no man with brains enough to read the constitution and who has read it, who does not know what it means, and this bill, Mr. Gear's bill, and all bills that relieve railroad property from any of the taxable burdens of individual property, are deliberate violations of the provisions we have quoted. Every member who voted for this bill, made oath that 'he would support the Constitution of the State of Iowa,' and that he would 'faithfully discharge' his duty. What we have said and what seventy-five Representatives have done, sufficiently indicate the high estimate they put upon their oaths, and what they regard as 'faithfully discharging' their duties to the people. If the Legislature will only adjourn without further action we will be gratified. Nothing good can come of the action of those who imagine they serve the people when they are merely *obeying orders from their railroad owners*.¹¹⁴

From the language of the editorial it is evident that the cities understood that the proposed measure would make their rights far more limited than under the existing gross receipts law of 1870. In this they were not mistaken. They viewed the measure as one drawn for the benefit of certain country districts. Property which to some extent they had contributed, and for which they were still in debt, was to be diffused along the various lines and taxed far from the place where it received municipal advantages and municipal protection. This condition, indeed, seemed almost intoler-

able to some of the members of the legislature. Other editorials in the *Burlington Hawk-Eye* comment in equally severe terms upon the bill.¹¹⁵

Nor was criticism of this character confined to the columns of the Burlington paper. The *Daily Gate City* of Keokuk contains statements of a similar nature. "As an example of cunningly arranged words", said the Des Moines correspondent, "it has few equals in literature, having evidently been drafted by a master mind in railroad interests. This shrewdness cropped out after the bill had been under consideration for a time, when it appeared that almost inadvertently the members from the country were voting and acting in direct opposition to the city members. How plainly the reason for this stood out upon sifting the clause that provided for an assessment of the road as a unit, along its entire length, and then making a pro-rata *distribution* throughout the State in the counties."

The *Gate City* writer continued by pointing out that Davenport with \$500,000 worth of railway property would receive credit for an assessment of only \$20,000, while an open prairie township with six miles of road would receive \$60,000. In conclusion the argument was advanced that it had cost these prairie townships comparatively nothing to have roads run through them, while in the cities huge donations had been made, and in addition the railway corporations received the benefit of the lighting of streets, police, and fire protection. The adroit manner, however, in which an appeal was made to sectional interests enabled the railroads to "quietly march to an easy success."¹¹⁶

The sentiments expressed through the above mentioned papers did not, however, prevail universally throughout the State. Some sections were still without transportation facilities and, therefore, were inclined to views diametrically in opposition to those above outlined. In the *Boone County Democrat* there is practically nothing on the subject

of railway taxation. Boone at that time was expecting machine shops and other railroad improvements. The city of Ottumwa was also demanding railroads and had no sympathy with the attitude of the eastern cities. The Des Moines correspondent of the *Ottumwa Courier* had the following to say on the subject of railway taxation:

A few resolutions were presented after which, under the order of 'unfinished business', came up 279, at which they have been hammering away now four entire days.

The big fight this morning was over the amendment to strike out section (9), the city representatives fighting as if for life in favor of the amendment, the rural gentlemen, or 'greenies' from the interior giving them in return as good as they gave, and finally defeated the striking out by a vote of 54 nays to 33 yeas.

All went smoothly then until section (12) was reached, when Mr. Green of Scott, offered an amendment containing twenty-six sections all of which were read by the Clerk. This amendment was nothing short of a tariff bill that the gentlemen from the border of the Mississippi expect to get through. Of course, Green had to make his speech in support of his measure, but it was evident the whole thing was nothing but '*skull-duggery*' to gain time.

Continuing, the writer mentions other speeches "eulogistic of the gentlemen from the interior, but it was too thin, and didn't take worth a cent."¹¹⁷ Other references to the problem of railway taxation in the *Courier* have the same tone, showing no sympathy with the opposition from the older cities.

It was this radical difference of opinion in various sections of the State (especially as based upon the peculiar economic interests of the rural districts as opposed to the large cities) on the question of transportation that made a compromise in the law of 1872 possible. The abler minds of the time thoroughly understood the situation, and that is why the contending forces were so directed as to induce the interior members to vote for the measure most desired by the railroads.

After a brief debate the "Bill of Abominations" passed the Senate, almost without amendment and by a large majority. It is clear that the cities lost all chance of securing their rights by so vigorously demanding the local method of assessment. This demand, moreover, greatly aided the railways in their efforts to bring about a compromise with the country members of the legislature. Senators Charles Beardsley of Burlington and B. B. Richards of Dubuque were the foremost advocates of local assessment. The plan of a State board was strongly supported by Senators Wm. Larrabee of Fayette County, J. S. Hurley of Louisa County, W. B. Murray of Scott County, S. H. Fairall of Johnson County, and John Y. Stone of Mills County. Senator Stone asked "how an honest farmer, acting in the capacity of township assessor, would go to work to establish the value, for assessment purposes, of six miles of railroad spanning the broad prairie".¹¹⁸

On March 20th Senator Larrabee, as Chairman of the Committee on Ways and Means, reported the railroad bill recommending certain amendments.¹¹⁹ A motion by Senator Beardsley to strike out the section providing for a Census Board to make the assessment was defeated by a decisive vote.¹²⁰ It should, however, be borne in mind that many members in both the Senate and House, who considered the method of local assessment wholly untenable, realized that the measure would work injustice to the cities. In other words a considerable number of members were willing to sacrifice the special interests of the cities to secure a central State administration for the assessment of railroads. The committee's bill finally passed the Senate by a vote of 41 to 7.¹²¹ The seven members voting against the final passage of the measure were Senators Charles Beardsley of Des Moines County, J. C. Chambers of Cedar County, H. R. Claussen and Robert Lowry of Scott County, A. Converse of Butler County, E. S. McCulloch of Lee County, and B. B. Richards of Dubuque County.

The question now arises, how did this measure come to be enacted into law? What is the real import of the debates of the Thirteenth and Fourteenth General Assemblies? What causes operated to secure the passage of an act so faulty in its method of tax distribution? What political forces were responsible for a law, which from the standpoint of the people at large was in every aspect less desirable than the gross receipts system which it supplanted? The answer is not difficult to ascertain.

In the Thirteenth General Assembly it was evident that the railroads favored the gross receipts method of taxation. What the people demanded was taxation of railway property at its situs in just the same way that other property was taxed. Their demands, however, were not definite and well outlined. As Col. Smith pointed out in February, 1870, at the Savery Hotel meeting, the friends and advocates of a property tax plan confused the terms assessment and taxation. What many people had in mind was local taxation in some form, believing at the same time that the actual valuation of railway property should be made by a State board. While believing in local taxation they felt that a system of local assessment would be disastrous to all railway enterprise. The extreme advocates of a property tax believed in the justice and efficiency of both local assessment and local taxation. In 1870 the two elements when united were not strong enough to secure their demands as over against the opposition of the railroads. The railways were able to secure both a gross receipts system and State administration.

But two years later when the Fourteenth General Assembly met, the sentiment for a property tax on railroads was too strong to be resisted. Accordingly the railroads at once abandoned all serious effort to retain the old gross receipts system and began devising a plan to secure a property tax law favorable to their interests. How was this

to be done? In the hands of that able railroad attorney, Judge Nathaniel M. Hubbard, the problem was a simple one and easy of solution.

A house divided against itself can not stand; and Judge Hubbard recognized that the advocates of the property tax system formed such a divided house in the Fourteenth General Assembly. The majority wanted local taxation and would be satisfied if such a system could be secured. They were either indifferent to the question of local assessment or positively preferred an assessment by a State board. Some desired and labored continuously for the latter alternative. The extremists, however, demanded both local assessment and local taxation. Another consideration made the situation still more complicated, since a few members believed in local assessment and taxation for real estate, the right of way, depots, machine shops, etc., while they considered that the State might very properly tax the rolling stock.

Under these circumstances three alternatives presented themselves to the General Assembly: (1) State assessment and State taxation of all railroad property; (2) local assessment and local taxation of all railroad property; and (3) a compromise, which might be along the line of State assessment and local taxation or which might differentiate in some manner between movable and immovable railway property. Manifestly slight modifications of any of these plans were possible.

In order to understand what followed one must keep in mind that the railroads desired to avoid (1) the high municipal rates on their terminal facilities and (2) they were irrevocably opposed to local assessments. On the other hand a majority of the members of the General Assembly were satisfied with local taxation. Under such circumstances one is not surprised to note arguments which bristled with points like the following: a railroad is a unit; expensive

terminals have no value apart from the general system; one mile of track is no more valuable from the standpoint of revenue than any other mile; expensive bridges are merely so much track, and in fact are a burden to the road; the farmers after all support the road; and high municipal taxes would merely produce higher railway rates.

When the psychological moment came it was made clear to the country members that under the unit rule of valuation outlined in the Duncombe Bill the value of the terminals would be spread along the line and thus benefit them. To what extent this argument was sound will appear later. The fact that such a measure would enable the railroads to escape the high municipal rates on their expensive terminal facilities, while understood by a few members and mentioned in the debates, seems to have been kept as much as possible in the background. Moreover, there were those who honestly felt that what actually gave value to the railroad and its terminals was, in the last analysis, the produce shipped by the farmer and the goods purchased by him.

Thus it is clearly evident that the legislation of 1872 was the result of a compromise between the country districts and the railroads.

In order to ascertain more fully the real nature of this compromise letters were addressed to a number of men still living who were members of the Thirteenth and Fourteenth General Assemblies. In the majority of replies which have been received the writers admit a more or less definite knowledge of such a compromise. Mr. Fairall of Iowa City, in his letter of January 17, 1908, does not deny that such a compromise was made, but confesses having no direct knowledge of it. He says, however, "I have no doubt that Judge Hubbard and other shrewd men representing railroads thought how depots and terminals might be assessed, but they kept that matter in the background". Ex-Governor Larrabee says that "the railroad lobby was

strong under the leadership of Judge N. M. Hubbard, taxation as a rule being higher in the cities than in farming communities, the railroad men contrived the scheme of taxing the property as a whole and distributing it according to mileage. In this way the representatives of the large cities objected for obvious reasons, and for obvious reasons the representatives of the farming interests joined with the railroads and passed the measure'. Finally, Mr. C. J. A. Ericson of Boone makes the following statement: "I was not a member of the House Committee on railways, but they had a hard fight on their hands, and Judge Hubbard maintained open headquarters in the old Savery (now Kirkwood) Hotel during the entire session and he considered the compromise bill a victory for the railroads, because after the passage of the bill he gave a sort of jollification banquet to his friends at the hotel."

It is not necessary, however, to rely on the memory of the few members of the General Assembly still living for conclusive evidence as to how the law of 1872 was finally passed. The speeches in the legislature contain numerous references to the subject. But above all the editorials in papers like the *Hawk-Eye*, the *Daily Gate City*, and the *Davenport Gazette* contain statements of the manner in which the law would operate and how its passage, through the skillful compromise of contending forces, had been effected. How the benefits would be reaped by the railroads on the one hand and a small per cent of the townships on the other, rather than by the State at large was, however, only partially understood.

The measure as finally passed and approved by the Governor bears a close resemblance to the committee substitute for House File 279, the original Duncombe bill.¹²² The form is changed, but the substance is essentially the same. The text is as follows:

Section 1. *Be it enacted by the General Assembly of the State*

of Iowa, That it shall be the duty of the Census Board, on the first Monday of March in each year, to assess all the property of each railroad company in this State, excepting the lands, lots, and other real estate of a railroad company not used in the operation of their respective roads.

Sec. 2. It shall be the duty of the president, vice-president, or general superintendent, and of such officers as the Census Board may designate, of any railroad company, owning, leasing, or operating any railroad within this State, to furnish said Board on or before the 15th day of February, in each year, a statement, signed and sworn to by such officer or officers, which statement shall embrace in detail and show, for the year ending January 1st, preceding:—

1. The whole number of miles owned, operated, or leased in the State by any railroad company making the return.

2. The number of miles owned, operated, or leased by such company, with a detailed statement of all property of every kind located in each county in the State.

3. Also a detailed statement of the number of engines, passenger, mail, express, baggage, freight, and other cars, or property used in operating, or repairing such railroad in this State; and on roads which are part of lines extending beyond the limits of this State, the return shall show the actual amount of rolling-stock in use on the company's line in the State during the year for which return is made.

The return shall show the amount of rolling stock, the gross earnings of the entire road operated by the company, and the gross earnings of the road in this State, and all property designated in section 3, of this act, and such other facts as the Census Board shall in writing require.

Sec. 3. The said property shall be valued at its true cash value, and such assessment shall be made upon the entire road within the State, and shall include the right of way, road-bed, bridges, culverts, rolling stock, depots, station-grounds, shops, buildings, gravel-beds, and all other property, real and personal, exclusively used in the operation of such railroad. In assessing said railroad and its equipments, the said Census Board shall take into consideration the gross earnings per mile for the year ending January

1st, preceding, and any and all other matters necessary to enable said Census Board to make a just and equitable assessment of said railroad property. If a part of any railroad is without this State, then, in estimating the value of its rolling-stock and movable property, they shall take into consideration the proportion which the business of that part of the road lying within the State bears to the business of the road without the State:

Provided, That the valuation by the Census Board of the property of railroads shall be in the same ratio as that of the property of individuals.

Sec. 4. The Census Board, on or before the 15th of March, shall transmit to the board of supervisors of each county through which any of said roads run, a statement showing the length of main track of road within such county, and the assessed value per mile of said road as fixed by a pro rata distribution per mile of the assessed value of the whole property named in section three of this act. Said statement shall be entered upon the proper records of said several counties.

Sec. 5. It shall be the duty of the board of supervisors of said counties, at their first meeting after receiving such statement, to make and enter in the proper record an order, stating and declaring the length of the main track, and assessed value of such road lying within each city, town, township, and lesser taxing district, in said county through which said road runs, as fixed by the distribution of the amount assessed by the Census Board, which aforesaid amount shall constitute the taxable value of said property for all taxable purposes. And the amount due each city or incorporated town, under the provisions of this act, shall be paid over, when collected by the county treasurer, to such city or town, and the board of supervisors shall transmit a copy of said order to the city council or trustees of each city or incorporated town or township.

Sec. 6. All such railroad property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes as the property of individuals within such counties, cities, towns, townships, and lesser taxing districts.

Sec. 7. All laws in force relating to the enforcement of the payment of delinquent taxes, shall be applicable to all taxes levied

under the provisions of this act, and whenever any taxes levied under this act shall become delinquent, the county treasurer, having control of such delinquent taxes, shall proceed to collect the same in the same manner, and with the same right and power, as a sheriff under execution, except that no process shall be necessary to authorize him to seize and sell engines, cars, or any other rolling stock for the collection of said taxes.

Sec. 8. Lands, lots, and other real estate belonging to any railroad company not exclusively used in the operation of the several roads, shall be subject to assessment and taxation the same as other similar lands in the several counties wherever situated.

Sec. 9. Every railroad company which shall have paid all taxes on gross earnings provided for by chapter 106, of the acts of the Thirteenth General Assembly, shall be released from the payment of all other taxes which may have been levied upon the road-bed, right of way, track, rolling stock, and necessary buildings for operating their road, and no taxes for prior years for State, county, municipal, or any other purpose, for which any tax can be levied under the laws of the State, up to the first day of January last, shall be collected from any such railroad company on such property.

Sec. 10. No provision of this act shall be held to apply to any railroad bridge across the Mississippi or Missouri river, but such bridges shall be assessed and taxed on the same basis as the property of individuals.

Sec. 11. In case the proper officer of any railroad company shall fail to make the statement under oath herein named, the Census Board shall proceed to assess such railroad property, and shall add thirty per cent. to the assessable value thereof.

Sec. 12. *Provided*, That for the tax of 1872, the return under oath shall be by the first day of June next, and the board of supervisors shall perform the requirements of this act at their September meeting in September next, and the assessment for the year shall be made in the month of July next, by the Census Board.

Sec. 13. All laws and parts of laws, inconsistent with the provisions of this act, are hereby repealed.

Sec. 14. This act, being deemed of immediate importance, shall

take effect after publication in the Daily State Register and Daily Leader, newspapers published in the city of Des Moines.¹²³

By examining critically the various sections of this act it will be seen that its fundamental principles are clearly defined. In fact it is the general property tax from the standpoint of the underlying theory of contribution, but not from the standpoint of assessment. The valuation of the various railroad lines is not fixed by the local assessors who assess the general property in each county, but by a State board, namely, the Executive Council. This State board arrives at the valuation of each line of railroad by taking into consideration the gross earnings per mile and "any and all other matters necessary to enable said council to make a just and equitable assessment of said railroad property."¹²⁴

In case a part of the line is out of the State, the Executive Council is given power to take into consideration the proportion which the business within the State bears to the business outside of the State. In a word the Executive Council is given much latitude in arriving at a just valuation.

The question which presents itself to the inquiring mind is the meaning of the phrase "any and all other matters necessary to enable the said council to make a just and equitable assessment of said railway property". The report which each company is required to make is specific, clear, and can not be misunderstood. It must contain a detailed account of the physical assets of the roads, the gross earnings, net earnings, and operating expenses. But the important question is the method of actually determining the valuation after the reports are in. Do the actual physical assets of the roads form the primary basis of valuation, or are earnings in some form of fundamental importance? The Secretary of the Executive Council (a man who is in a position to know the facts) informs the writer

that, while other things are considered, gross receipts form the chief basis of valuation. If a railroad is earning but little its valuation will be placed low and the tax will be relatively small. High earnings mean high valuation and relatively higher taxes. If a road is earning but little or perhaps nothing at all above running expenses, it is valued at the low amount of \$2500 or \$3000 per mile. In fact while the general system of railway taxation in Iowa is that of a property tax, the method of arriving at the valuation of said property is almost entirely through a consideration of gross income.

In the second place railway property in Iowa is valued on a unitary plan. Thus railway terminals are not valued in the cities, but their value is diffused over the entire railway division. As a result depots, machine shops, side tracks, etc., are not taxed in the cities where they receive the special benefit of municipal light and fire protection. All such property would usually be taxed at the regular municipal rates under an ordinary property tax. Not so under the present system in Iowa. Here the city is permitted to levy municipal rates only on its pro rata valuation of main track.

After the valuation of the respective lines is determined, the Executive Council sends to the auditor of each county the number of miles of main track in said county and the assessed value per mile. This is the basis for tax levies. The county board of supervisors makes a statement setting forth the miles of road in each lesser taxing district together with the valuation per mile. Copies of this statement are sent to each taxing district through which a line passes. When the tax is collected it is disposed of in the same way as taxes on other property.

Under the provisions of the law of 1872, briefly stated, the State receives its rate on the total valuation within its borders; the county receives the usual county rate on its mileage valuation; and the same is true of the lesser taxing

districts. The method of levy and collection is the same as for the general property tax; and it departs from the ordinary rules of such tax only in the method of determining and distributing the valuation of the respective lines of road. Such, with minor amendments, is the law as it still exists and is administered in Iowa.

Thus the ad valorem system of railway taxation with unitary valuation, State assessment, and pro rata mileage distribution was finally established in Iowa as the result of a strange but very logical compromise between the farmers and the railroads. The fact that a few extremists in the larger cities held out for both local assessment and local taxation while the majority of members were satisfied if they secured local taxation made it possible for clever railroad attorneys to put through such a measure. Thus a minority of townships and other local districts secured the special privilege of taxing their pro rata share of main track, a form of non-local property; Judge Hubbard relieved the railroads of high municipal rates; and the cities of Iowa lost the right to tax railroad terminals, which, after much litigation and delay, had been guaranteed to them under the gross receipts system only a few months before by a decision of the Supreme Court in *Dunleith and Dubuque Bridge Co. vs. The City of Dubuque*.¹²⁵ After more than a generation has passed the cities are still struggling for the possession of this right.

XX
RAILWAY TAXATION
1872-1910

The prophetic statements made in the columns of the *Keokuk Daily Gate City* soon after the passage of the law of 1872 have proved true. "And it is a law the repeal of which will be hard to compass. . . . If the discrimination is in behalf of the prairie sections of the State this year in the ratio of three to five, in four years it will be as four to five. It will puzzle the shrewd men of the East to cipher themselves out of this dilemma."¹²⁶ While a few minor changes have been made during the generation that has just passed, the underlying principles of the law for the taxation of railroads in Iowa remain substantially the same as enacted in 1872.

At the adjourned session of the Fourteenth General Assembly the Census Board was replaced by a body called the Executive Council, made up of the "governor, auditor, secretary, and treasurer of state, or any three of them."¹²⁷ It was further provided that "on the first Monday of March in each year, the executive council shall assess all the property of each railway corporation in this state, excepting the lands, lots, and other real estate belonging thereto not used in the operation of any railway."¹²⁸ The Executive Council has continued to perform this function up to the present time.

No further legislation of importance was passed on the subject of railway taxation until the meeting of the Seventeenth General Assembly, when on March 21, 1878, the Committee on Ways and Means of the Senate introduced a bill providing for the taxation of sleeping and dining cars.

There was practically no opposition to the bill. After being read the first and second time, on motion of Senator Larabee the rules were suspended and a final vote taken, which stood forty-two for and only two against.¹²⁹ The measure was taken up in the House on the following day, and on motion of Mr. J. Y. Stone was ordered engrossed and read a third time. The vote on its passage stood seventy-eight for and twelve against.

As approved on March 25, 1878, the act consists of three brief sections:

Section 1. That in addition to the matters required to be contained in the statement provided for in section 1318 of the Code, such statement shall show the number of sleeping and dining cars not owned by such corporation, but used by it in operating its railway in this state during each month of the year for which the return is made, and also the number of miles each month that said cars have been run or operated on such railway within the state, and the total number of miles that said cars have been run or operated each month within and without the state.

Sec. 2. The executive council shall, at the time of the assessment of other railway property for taxation, assess for taxation the average number of cars so used by such corporation each month, and the assessed value of said cars shall bear the same proportion to the entire value thereof, that the monthly average number of miles that such cars have been run or operated within the state shall bear to the monthly average number of miles that such cars have been used or operated within and without the state, such valuation shall be in the same ratio as that of the property of individuals.

Sec. 3. The executive council shall, as provided by sections 1318 and 1319 of the Code, first assess the value of the property of the corporation using sleeping and dining cars not owned by such corporation, and shall then add to such valuation, the amount of the assessed valuation of said sleeping and dining cars, made as hereinbefore provided, and such aggregate amount shall constitute and be considered the assessed value of the property of such corporation for the purposes of taxation.¹³⁰

The text of this measure is self-explanatory. By its provisions no important change is made in the general system of railway taxation. There is merely an additional statement required of the companies as to their sleeping and dining cars, and adequate provision is made for determining the value of such cars and how taxes shall be levied on the same.

A period of years now passes without any pronounced agitation on the subject of taxing railway corporations.¹³¹ To be sure statements recommending changes in the revenue laws were made from time to time, but such statements refer for the most part to the question of inefficient assessment. In his biennial message of 1896, Governor Jackson said: "The highest welfare of our state demands a thorough and careful revision of our revenue laws to the end that all property shall pay its just share of the expenses of the state, and that sufficient revenue shall be raised to maintain our state in the position in which it belongs, at the head of the progressive and intelligent states of our nation."¹³² No substantial revision, however, has been made either of the revenue laws in general, or the railway tax law in particular.

Some minor changes, however, were made by the Twenty-eighth and Twenty-ninth General Assemblies. On March 21, 1900, an act was approved amending section 1340 of the *Code* by adding the following:

Such statement shall show the average daily sleeping car and dining car service or wheelage operated on each part or division of the line or system within the state, designating the points on the line where variations occur, with the mileage of that part having the same daily service or wheelage.¹³³

Again by an act of February 28, 1902,¹³⁴ the time of making reports was changed, as recommended by Governor Cummins in his inaugural address. Another law passed during the same session defined the character of reports required to be made by railroad companies for purposes of assessment in the following terms:

That for the purpose of making reports to the executive council, the gross earnings of railway companies, owning or operating a line or lines of railway partly within this state, and partly within another state, or other states, or territory, or territories, upon their line or lines within this state, shall be ascertained and reported by said railway companies as follows, to wit: The aggregate of the earnings upon business originating and terminating within this state, upon business originating in this state and terminating elsewhere, upon business originating elsewhere and terminating in this state, and upon business neither originating or terminating in this state, but carried on or done over the line or lines in this state or over some part thereof, shall be reported; and with respect to all such interstate business the earnings in this state for the purpose of report shall be actually computed upon the basis of the length of haul or carriage in this state as compared with the length of haul or carriage elsewhere. It being hereby declared that for the purpose of making reports looking to the assessment of railway property for taxation the gross earnings or business done or carried partly within this state and partly in another state, or other states, or territory, or territories, shall be that proportion of the entire earnings of such business that the haul or carriage in this state bears to the entire haul or carriage.

Sec. 2. The executive council shall have the power to prescribe such rules and regulations with respect to the keeping of accounts by the railway companies doing business in this state as will insure the accurate division of earnings as aforesaid, and uniformity in reporting the same to the executive council.

Sec. 3. The executive council shall have the power to prescribe a method for all railway companies doing business in this state, together with rules and regulations for the ascertainment of the net earnings of the railway lines in this state, to the end that all such railway companies, in ascertaining and making report of net earnings, shall proceed upon the same basis and in a uniform manner.

Sec. 4. The reports herein provided for are not in lieu of, but in addition to, the reports provided for by law, and they shall be made at the time and as a part of the reports already required.

Sec. 5. The rules, regulations, method, and requirements herein

provided to be made by the executive council shall be made and communicated in writing or print to the said several railway companies within thirty days from and after the passage and taking effect of this act, and shall be and become binding upon said railway companies from the time they are so communicated; provided, however, that the said executive council shall have the power to prescribe supplemental or additional rules, regulations, and requirements at any time, and communicate them to the several railway companies in the manner aforesaid, and with respect to such additional or supplemental rules, regulations, and requirements, they shall be and become binding upon the said railway companies within thirty days after they are so communicated.

Sec. 6. If any railway company shall fail or refuse to obey or conform to the rules, regulations, method, and requirements so made or prescribed by the executive council under the provisions of this act, or to make the reports as herein provided for, the executive council shall proceed and assess the property of such railway company so failing or refusing, according to the best information obtainable, and shall then add to the taxable valuation of such railway company twenty-five per centum thereof, which valuation and penalty shall be separately shown, and together shall constitute the assessment for that year.¹³⁵

This act was introduced in the House by Mr. E. H. English of Polk and passed by a unanimous vote on February 19th.¹³⁶ After slight amendments it also passed the Senate without an opposing vote.¹³⁷ Three points in the measure deserve special attention — the method of ascertaining gross earnings, the uniform regulations in regard to net earnings, and finally that reports of gross and net earnings shall be made not in lieu of but in addition to reports already required by law. The provisions of this law were also recommended by Governor Cummins in his inaugural address of 1902, where he says: "With net earnings, as with gross earnings, it is palpable that with respect to those railway companies which have systems doing business in two states or more, there must be some rule adopted for

the division of the cost of maintenance and operation. The rule must be equitable, and should be prescribed by law."¹³⁸

At the same session a measure was passed entitled "An Act defining and providing for the taxation of freight line and equipment companies" in which the term "freight line and equipment companies" is carefully defined and provision is made for a complete statement to the Executive Council. For purposes of assessment, the Executive Council "may require such company by its agents or officers, to appear before said council with such books, papers, or additional statements as the council may require, and may compel the attendance of witnesses in case said council shall deem it necessary to enable it to ascertain the actual value of such property."¹³⁹

With the exception of a few very minor changes,¹⁴⁰ this brings the amendments and additions to the law of 1872 up to date.

The statement now required to be made by the railroads to the Executive Council includes the following:

1. The whole number of miles of railway owned, operated or leased by such corporation or company within and without the state;
2. The whole number of miles of railway owned, operated or leased within the state, including double tracks and side tracks, the mileage of the main line and branch lines to be stated separately, and showing the number of miles of track in each county;
3. A full and complete statement of the cost and actual present value of all buildings of every description owned by said railway company within the state not otherwise assessed;
4. The total number of ties per mile used on all its tracks within the state;
5. The weight of rails per yard in main line, double tracks and side tracks;
6. The number of miles of telegraph lines owned and used within the state;
7. The total number of engines, and passenger, chair, dining,

official, express, mail, baggage, freight and other cars, including hand cars and boarding cars used in constructing and repairing such railway, in use on its whole line, and the sleeping cars owned by it, and the number of each class on its line within the state, each class to be valued separately;

8. Any and all other movable property owned by said railway within the state, classified and scheduled in such manner as may be required by said council;

9. The gross earnings of the entire road, and the gross earnings in this state;

10. The operating expenses of the entire road, and the operating expenses within this state;

11. The net earnings of the entire road, and the net earnings within this state.¹⁴¹

By comparing this statement with the provisions of the law of 1872,¹⁴² the reader will appreciate how slight the changes have been. Indeed, the report now required is essentially the same as that required in 1872. All that was fundamental in the matter of determining railroad valuation has thus endured for a generation. While numerous amendments have been made, resulting in more explicit provisions, the fact remains that the general provisions of the law to-day were enacted by the Fourteenth General Assembly. It will be noted that even at the present time stocks and bonds are not included in the report.

It would be a mistake, however, to assume that the people have been altogether satisfied with this system of railway taxation. In fact the law has never been satisfactory to the large cities, for reasons already outlined, and they have been a source of agitation for reform. Recently the League of Iowa Municipalities inaugurated a campaign for a terminal tax law which will be reviewed in a later chapter.¹⁴³

An historical narrative of railway tax legislation in Iowa, however, would be incomplete without a brief discussion of at least one earnest effort to change the plan of valuation under the present system. The forces tending in that direc-

tion seemed to come to a focus during the latter part of Governor Shaw's administration, when the feeling was more or less pronounced that certain corporations were escaping their rightful share of the tax burden. In fact this feeling was at the very basis of the wave of reform during the session of 1902.

Governor Cummins in his inaugural address, delivered January 16, 1902, made a number of vigorous remarks on the subject of railroad taxation. "Those whose property is valued by assessors", he declared, "subject only to a limited revision by the State Board of Review, have an undoubted right to demand that the Executive Council, the assessing board for railway property, shall so perform its duty that the railway corporations shall pay their just and proportionate share of taxes; or, to phrase it differently, that the assessable value of railroad property shall bear the same relation to its true value that the assessable value of other property upon the tax list bears to its true value."¹⁴⁴ The three great factors in determining the value of railroad property are declared to be: physical condition, gross earnings, and net earnings. In conclusion the Governor makes recommendations regarding the proper methods of ascertaining gross and net earnings, but does not refer to stocks and bonds as a desirable method of determining the value of railroad property.

Early in the session the Committee on Ways and Means had the subject of railroad assessment under consideration. Pending the introduction of the Junkin Bill ¹⁴⁵ a sub-committee of the Committee on Ways and Means made a thorough investigation of the subject. Hearings were granted and according to custom representatives of the leading railroads appeared. At this time no less than three distinct methods of railroad assessment were being considered by the General Assembly: first, the rigid stock and bond method advocated by Lieutenant Governor Herriott and

Senator Crossley; second, the use of stocks and bonds as one of the many elements in a flexible system of valuation, ably endorsed by Senators Junkin, Healy, and Lewis; and finally, the preservation of the present system which was supported by the railroad interests.¹⁴⁶ It soon became apparent that it would be impossible to secure a rigid system of valuation on the basis of stocks and bonds; and accordingly the more conservative plan of using stocks and bonds as one of the many elements of valuation commenced to gain favor both with the sub-committee and the Senate as a whole.

A report was filed by the sub-committee, in which it was said that "the Committee is of the opinion that the general belief that the railways of this state are not paying their fair share of taxes necessary for the support of the various departments of state government is well founded."¹⁴⁷ In addition the sub-committee said that it had "reached the conclusion that, in some respects, our present laws are entirely inadequate to meet the new conditions in railway management and financiering." The bill and report were signed by Senators J. M. Junkin, L. W. Lewis, T. D. Healy, and C. R. Porter.

The chief provision of the proposed bill deals with the method of determining railroad valuations. This was to be done "by consulting the market and finding the sum of the values of their stocks and bonds." In order to secure elasticity, it was also provided that the Executive Council might reduce valuations "for good and sufficient reasons". Against the abuse of this right was the additional provision that "affirmative reason shall be given for deviating from the stock and bonds measure."¹⁴⁸

Two leading objections were made by the committee to the present system of railroad valuations: first, it was held that the result had been inequality between railroads and other property, and also between various lines of railroad;

and secondly, unlimited discretion had been lodged with the Executive Council without any "predominant plan being outlined" by which to guide their proceedings. It was pointed out that powerful influences were being constantly brought to bear upon the Council, "which no public officer can safely be expected to withstand." The hope was expressed that the proposed measure would remedy both evils.

The bill to which reference is made was introduced on March 3rd by Senator Junkin.¹⁴⁹ Lieutenant Governor Herriott objected strenuously, considering it "a mere pretense and a sham", having "nothing in it but flexibility".¹⁵⁰ What the Lieutenant Governor favored was a more inflexible provision making stocks and bonds the guiding consideration. These views were incorporated in an amendment which was offered by Senator Porter on March 11th and defeated by a vote of twelve to thirty-two.¹⁵¹

The Porter amendment contained these provisions:

The said executive council shall proceed to ascertain and assess the value of the property of said railway companies in Iowa, and in determining the value of the property of said companies in this state, to be taxed within the state and assessed as herein provided, said council shall be guided by the value of said property as determined by the value of the entire capital stock of said companies, and the cash value of their bonded indebtedness, and such other facts, information, evidence, and rules as will enable said council to arrive at the true value in money of the entire property of said companies within the state of Iowa, in the proportion which the same bears to the entire property of said companies, as determined by the value of the capital stock thereof and the other facts, information, evidence and rules as aforesaid.¹⁵²

A second amendment offered by Senator Porter providing that "the Executive Council shall enter on its records for publication the valuation of all the stocks and bonds as thus returned and corrected and its reasons in full for any variation therefrom in making the assessment" was

lost; and a third amendment along similar lines was also voted down.¹⁵³ With the defeat of these amendments, the danger of establishing any arbitrary system of valuation on the basis of stocks and bonds had passed; and railroad attorneys and tax commissioners were encouraged in their efforts to defeat even the compromise plan of requiring stocks and bonds to be reported to the Executive Council.¹⁵⁴

Senator Lewis made a strong speech in which he pointed out the difficulties of both gross and net earnings and claimed that the only means of reaching the franchise value was through stocks and bonds.¹⁵⁵ To the railroads the bill was objectionable in any form; but if it had to pass, they would eliminate the objectionable provisions as far as possible.¹⁵⁶ All the efforts exerted at the time could not, however, prevent the measure from passing the Senate. The *Des Moines Daily Leader* says that "the victory achieved by the friends of the bill was a most signal and unexpected one. The railroad lobby, never so diligent as in the past week, claimed until yesterday morning that they had the bill beaten."¹⁵⁷ Continuing, the same article states that "the railroads are expected to make a hard fight to keep it in the house ways and means committee. It will have an uncomfortable course in the House from all indications." This prophecy was fulfilled; for when the measure went to the House it was indefinitely postponed.¹⁵⁸

After his first inaugural no recommendations of a definite character on the subject of railway taxation were made by Governor Cummins.¹⁵⁹ Other matters were pressing to the front upon the stage of political activity. Primary election on the one hand, and two cent fare bills on the other, have caused the subject of railway taxation to be relegated temporarily to the rear. Just when it will again become an issue and how it will be brought forward depends upon the will of the people and upon the economic and financial conditions of the State. The whole subject may

be dealt with on the installment plan for political purposes, or it may be treated as a very important part of a scientific program of much needed revenue reform.

This chapter would be incomplete without passing in review the general development of railway transportation since 1872, as indicated by the following tables:

TABLE XXV*160

TABLE SHOWING MILES OF ROAD, GROSS EARNINGS, AND ASSESSED VALUE FOR THE YEARS 1872-1879

DATE	MILES OF ROAD	GROSS EARNINGS		ASSESSED VALUE	
		PER MILE	TOTAL	PER MILE	TOTAL
1872.....	3,095	4,050	12,535,236	5,932	18,360,133
1873.....	3,642	4,138	15,072,605	5,173	18,842,652
1874.....	3,728	4,139	15,430,620	5,823	21,719,809
1875.....	3,765	4,135	15,568,908	5,840	21,986,658
1876.....	3,823	4,819	18,422,588	5,903	22,421,070
1877.....	3,938	4,373	17,221,033	5,694	22,421,070
1878.....	4,075	4,380	17,847,728	5,306	21,619,978
1879.....	4,323	4,926	21,294,275	5,214	22,540,904

*I have not given decimals, which accounts for slight apparent inaccuracies.

Table XXV shows miles of road, total gross earnings, gross earnings per mile, total assessed value, and assessed value per mile. It has not been possible to obtain a statement of the total amount of railway taxes paid during these years. The reports of the Executive Council contain such a statement for only one year out of the eight included in the table. It is apparent that the period was essentially one of financial depression. For the six years following the panic of 1873 less than seven hundred miles of railroad were constructed in Iowa. This forms a marked contrast to the phenomenal increase of mileage from 1,448 miles in 1868 to 3,642 miles in 1873. More than two thousand miles had been constructed in four years as compared with less than seven hundred miles in six years. The causes of this change are not difficult to ascertain. The financial and industrial depression following 1873 was a serious check to constructive railway enterprise. During the pre-

ceding period mere speculation had been an important factor in promoting industry along all lines. Add to this the liberal land grants with the time limitations attached thereto and numerous large subsidies, and we have the most favorable conditions for railroad building. This table studied in conjunction with table XXIV affords a striking example of industrial action and reaction.

The gross receipts and assessed value per mile remain very much the same over the entire period from 1872 to 1879. The total gross earnings and total assessed value increase only in a slight degree. On the whole the period is almost static from the standpoint of railroad building.

Table XXVI deals with the period 1880-1907, and gives more detailed statistics.

This table was prepared by the Executive Council from reports submitted by the various railway companies doing business in this State. It gives mileage of road, assessed value, gross earnings, net earnings, taxes paid, and other statistics of interest in making a comparative study. The total assessed value is given and also the assessed value per mile, which is likewise true for gross earnings, net earnings, and taxes.

By 1880 the country had almost entirely recovered from the panic of 1873. Conditions were again normal and in fact prosperous. Between 1880 and the panic of 1893, the mileage increased from 4,811 to 8,478 miles. During this same period the total assessed value increased more than twenty millions of dollars, and the total gross receipts approximately the same amount. The taxes paid advanced from \$559,768.00 to \$1,322,532.00, and the rate of tax per mile from \$129 to \$157. This represents a rapid development in transportation facilities, and is indicative of the marvelous era of industrial expansion in the decade following 1880.

In the period of six years beginning with 1893 the effects

TABLE XXVI¹⁶¹
COMPARATIVE STATEMENT OF ASSESSMENTS OF RAILROAD PROPERTY, EARNINGS, AND TAXES REPORTED
IN THE STATE OF IOWA FOR THE YEARS 1886 TO 1907 INCLUSIVE

Date Reported	Miles of Road	Assessed Value		Gross Earnings		Percentage of Assessment to Gross Earnings	Net Earnings		Per Cent of Net Earnings	Taxes Paid	Taxes Per Mile of Road	Per Cent of Taxes on Gross Earnings	Per Cent of Taxes on Net Earnings
		Total	Per Mile	Total	Per Mile		Total	Per Mile					
1880.....	4,811	\$34,689,126	\$4,907	\$22,256,165	\$4,634	108	\$8,672,764	\$1,803	277	\$359,768.00	\$129	.026	.057
1881.....	5,209	26,743,202	4,866	27,707,143	5,276	93	9,999,085	1,898	268	657,286.00	116	.024	.064
1882.....	5,723	26,202,284	4,557	28,273,633	5,108	88	11,412,244	1,991	220	635,127.00	121	.023	.064
1883.....	6,782	26,232,750	4,171	31,153,363	4,578	91	11,068,291	1,628	266	573,515.00	100	.019	.080
1884.....	7,106	29,695,209	4,206	35,490,236	4,994	84	14,121,269	1,957	212	704,492.00	104	.023	.064
1885.....	7,445	31,315,838	4,208	34,149,124	4,587	92	13,154,199	1,767	228	853,718.00	120	.024	.060
1886.....	7,690	28,216,688	4,435	36,467,428	4,739	94	13,186,267	1,700	253	945,314.00	127	.028	.073
1887.....	7,912	28,250,391	4,350	35,231,206	4,461	109	13,472,795	1,704	270	967,037.00	122	.028	.075
1888.....	8,291	42,100,375	5,186	37,702,835	4,765	114	13,671,248	1,726	301	1,013,731.00	95	.027	.071
1889.....	8,268	45,371,008	5,214	36,265,064	4,390	119	9,515,947	1,167	454	1,194,637.00	144	.060	.083
1890.....	8,269	42,858,990	5,159	37,492,779	4,536	114	11,895,000	1,439	361	1,202,523.00	157	.066	.137
1891.....	8,377	44,585,005	5,319	37,699,553	4,523	118	10,966,373	1,312	405	1,245,344.00	151	.063	.105
1892.....	8,408	44,005,157	5,216	44,416,468	4,810	111	12,625,300	1,502	364	1,246,224.00	149	.063	.114
1893.....	8,478	44,899,794	5,292	44,294,063	5,232	101	12,736,553	1,502	323	1,322,523.00	157	.063	.104
1894.....	8,477	44,573,695	5,262	43,694,972	5,029	105	12,465,668	1,470	360	1,403,786.00	166	.062	.111
1895.....	8,481	44,376,542	5,223	38,574,444	4,230	124	10,265,200	1,222	428	1,355,635.00	160	.063	.109
1896.....	8,487	44,381,211	5,229	37,662,442	4,438	118	12,575,362	1,481	333	1,377,678.00	163	.063	.123
1897.....	8,481	44,372,916	5,232	39,622,200	4,671	113	13,420,668	1,552	357	1,383,564.00	163	.057	.110
1898.....	8,474	44,438,792	5,244	41,225,093	4,877	107	13,402,434	1,552	331	1,388,908.00	163	.025	.110
1899.....	8,518	44,550,129	5,260	46,202,903	5,424	96.4	15,132,068	1,822	287	1,404,651.00	166	.024	.105
1900.....	9,226	46,008,510	4,951	49,546,679	5,364	92.8	15,666,367	1,685	296	1,424,124.00	167	.031	.093
1901.....	9,326	47,071,263	5,042	52,264,817	5,607	89.9	15,094,072	1,616	312	1,509,270.00	163	.030	.087
1902.....	9,414	51,307,960	5,449	56,070,943	6,018	91.5	16,460,975	1,766	312	1,563,482.87	169	.030	.104

TABLE XXVI—CONTINUED

DATE REPORTED	Miles of Road	Assessed Value		Gross Earnings		Percentage of Gross Earnings to Net Earnings	Net Earnings		Per Cent of Assessment, Net Earnings	Taxes Paid	Taxes Per Mile of Road	Taxes on Gross Earnings	Per Cent of Earnings Taxes on Net
		Total	Per Mile	Total	Per Mile		Total	Per Mile					
1903.....	9,726.8173	\$45,541,512	\$5,814	\$55,466,305	\$5,965	100.1	\$17,134,102	\$1,807	329	\$1,022,493.46	\$174	.029	.009
1904.....	9,799.6268	\$7,835,160	5,871	\$8,466,340	6,019	98.4	15,076,163	1,553	381	1,574,419.17	199	.033	.109
1905.....	9,799.2262	\$8,190,159	5,937	\$7,396,945	5,837	101.4	15,245,574	1,566	379	2,141,933.53	220	.036	.143
1906.....	9,827.0005	\$3,827,199	6,343	\$2,792,307	6,403	99.3	19,263,933	1,964	324	2,069,351.74	213	.036	.136
1907.....	9,894.2208	\$3,324,120	6,447	\$9,791,245	7,114	90.6	21,890,793	2,221	289	2,211,653.13	226	.035	.115

*This table shows the aggregate assessed value and the average assessed value per mile of the railroad property of this state, as fixed by the executive council on the first Monday in March or the first Monday in July of the respective years named in the left hand column. The items, "miles of road" and "gross earnings", shown in connection with each year's assessment, are for the year ending on the 31st day of December last preceding. The following column shows what percentage the aggregate assessed value is of the aggregate gross earnings of the preceding calendar year, likewise of net earnings.

†This amount is based on the average number of miles of road operated within this state for the entire year ending December 31st, of the year preceding.

‡The taxes paid are always paid on the mileage reported two years prior to the date the taxes are reported to the executive council; *e. g.* the tax reported in 1906 was levied on 9,799.6263 miles of road, that being the mileage reported and assessed in 1904 and the taxes were paid in 1905. Hence, in determining the amount of taxes paid per mile, it is necessary to use the mileage reported two years prior to the year in which the taxes were reported to the executive council. In determining the per cent of tax on gross and net earnings, it is necessary to take earnings of preceding year.

of the crisis are evident. Railway mileage decreased from 8,478 to 8,474 miles. The total assessed value decreased from \$44,869,784 to \$44,438,782, and the assessed value per mile was as a result less in 1898 than in 1893. The gross earnings fell off still more. The total gross earnings in 1893 were \$44,284,053 and the gross earnings per mile \$5,223; while in 1898, the former had dropped to \$41,335,093, and the latter to \$4,877. On the contrary the period was characterized by a slight increase of net earnings, due no doubt to lower wages and more economical management. A small increase in taxation is also observed.

The period since 1899 has been one of substantial progress. That the increase in mileage has not kept pace with the increase of assessed value and gross earnings, is a natural result where a State gains in wealth and population. During the past year the assessed value was \$63,334,120 — an increase of about twenty millions in less than a decade. The gross earnings were nearly \$70,000,000 and the net earnings over \$20,000,000. Finally, the taxes per mile have increased from \$163 in 1901 to \$225 in 1907. The full significance of these statistics becomes apparent only when we compare Tables XXIV, XXV, and XXVI, thus observing almost at a glance the industrial development of the State. That transportation is the very basis of economic growth has no better illustration than in the railway history of Iowa. The building of over 9,000 miles of road since 1862, the increase in gross earnings from about \$1,000,000 to over \$60,000,000, the advance in taxes paid from \$11,093.46 to \$2,211,682.18, and the change of rate per mile from the small sum of \$17.72 to \$225 summarizes the story of the transformation of a wilderness into a great Commonwealth.

The period of nearly forty years which has elapsed since 1872 may be reviewed by simply stating that nothing has

been accomplished aside from the more elaborate reports which are now required to be made to the Executive Council. The only comment necessary concerning these reports is the important consideration that what is most vital after all is not the content of the law but the character of its administration. Nor is it clear that the addition of stocks and bonds would have been any real benefit to the public. The critical reader does not need to be assured that the chief criticism of the present law is not in the character of reports made to the Executive Council. Of far more importance is the fact that since 1872 no change has been made in the system of railway tax distribution, and that the assessment of this class of property is still in the hands of an ex officio body rather than a permanent tax commission.

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XXI

JUDICIAL ASPECTS OF RAILWAY TAXATION

A study of the taxation of railroads in Iowa would be incomplete without at least a brief consideration of the judicial aspects of the legislation that has been enacted. What the courts think about a measure under our form of government is always important and in some cases vital. In Iowa, however, the legal points at issue have not been as far-reaching as in some other States, there being no instance where a court decision has overthrown the entire system of railway taxation and required the adoption of a new one by the legislature. The decisions in this State have involved simply special features of the various acts and have not had the result of revolutionizing the plan of taxation. This has been true under all three systems of railway taxation that have prevailed in Iowa.

The first period in the history of railway taxation, as already outlined, closed in 1862; and the method then adopted was to tax roads through the shares of stock. The chief point of litigation that arose under this method of taxation was the right of municipalities to tax terminals. In the case of the *Burlington & Missouri River Railroad Company vs. Spearman and the City of Mt. Pleasant* ¹⁶² the court held (1) that the depot grounds of the plaintiff, being used for business purposes and bounded in part by the streets of the city, were subject to taxes for the improvement of streets and sidewalks, and (2) that the property of a railroad company was not exempt from taxation in this State, and that grounds held for depot purposes are subject to taxation as the property of such company. In regard to the act of 1858, which relates to the taxation of

railroads and the apportionment of such taxes between the State and counties, the opinion of the court was as follows:

This provision relates exclusively to the character of taxes in that particular act provided for, to wit: the State, County, and School tax. No reference is made to taxes for municipal purposes.

As the right of municipalities to levy special taxes upon railway terminals has been the basis of a large part of the railway tax litigation in this State the findings of the court in this particular case should be carefully noted.¹⁶³

The gross receipts law was in force for a period of ten years — from 1862 to 1872. It will be recalled that Section 16, Chapter 173, of the *Laws of 1862* has the following proviso:

The tax herein provided for [gross receipts tax of 1 %] shall be in lieu of all taxes for any and all purposes on the road-bed, track, rolling stock and necessary buildings for operating their road. But other property belonging to such Company, whether personal or real, shall be taxed as property of individuals in the respective counties in which the same may lie.¹⁶⁴

The court decisions of the decade referred to in the preceding paragraph deal in a large measure with the section just quoted. The chief points of contention appear to be: first, the right of a municipality to levy taxes upon the real estate of railroads; second, the right of a municipality to levy taxes upon the rolling stock of railroads; third, the right of a municipality to levy special assessments upon railroad property for the improvement of streets and sidewalks.

The first point mentioned was the subject of litigation for a number of years. The second and third points were settled by early decisions. As to the right of a municipality to tax rolling stock under the statutory provisions above quoted, it is found that in the case of *The City of Davenport vs. the Mississippi and Missouri Railroad Company*¹⁶⁵ such right is specifically denied. The language of

the court is plain and conclusive. Judge Lowe, by whom the opinion was written, says:

We say that the rolling stock of the railway is part and parcel of the road itself. The machinery by means of which it becomes vital and operative for the objects intended, and to this end is constantly passing to and fro, from one terminus to the other of the entire line of road constructed so that it has no such local position or *citus* in the city of Davenport, as to entitle said city more than any other town or city through which it passes, to tax the same for municipal purposes. In this respect the claim or right of each town to or through, which the rolling stock might go or pass, would be alike equal and valid. But that all of them should exercise this right to tax the same property, would be too unreasonable a proposition to merit discussion.¹⁶⁶

In the case of special assessments for the improvement of streets and sidewalks the verdict of early decisions is equally clear; but in this case the courts affirm the right of the cities to levy such assessments. In fact this attitude has almost universally been taken by the courts in other States — such assessments not being considered taxes under the meaning and intent of the Constitution. The courts of this State and of other States have held that such assessments are merely payments for the improvement of property.

In the case already referred to Judge Lowe rendered a very clear opinion on the general subject of special assessments, which is in part as follows:

What we have thus far said, has exclusive reference to taxes for revenue purposes, and does not apply to another class of special charges or assessments, which cities are frequently authorized in their charters to make against particular pieces of property for sidewalks or other improvements made in front of the same, intended mainly for the local advantage of the property itself, rather than the convenience of the public. Between this special police power and that of taxation for revenue, the courts have recognized a clear distinction, as involving in their exercise essentially dif-

ferent attributes or principles, the one being an ordinary tax for defraying the expenses of the municipal government, and the general improvement thereof, whilst the other is a special imposition or liability arising out of the benefit conferred upon the property assessed.¹⁸⁷

The view regarding such assessments as given by the Judge is no doubt good jurisprudence and sound economics. Just what the term "special assessments" should be made to include, however, is not always so clear.

The other matter mentioned, namely, the right of a municipality to levy taxes upon the real property of a railroad, was for a considerable period a disputed question. In the case of the *City of Davenport vs. the Mississippi & Missouri Railroad Company*, the court was equally divided, and therefore the decision of the lower court was affirmed. The opinion of Judge Lowe, however, was adverse to the right of a municipality to levy such a tax under the law as it then existed. In the case also of the *Dubuque and Sioux City Railroad Company vs. Dubuque*¹⁸⁸ the court was equally divided on the same point. But litigation continued, and finally in the case of *Dunleith and Dubuque Bridge Company vs. the City of Dubuque*¹⁸⁹ the court held that a municipality did have a right to tax the real property of a railway corporation, which meant a reversal of its former decision. It was held that the act of 1868 was limited in its scope to State and county taxes and had no reference to municipal taxes. The opinion, however, was not unanimous, Judge Cole dissenting on the ground that the one per cent on gross earnings in the act was plainly in lieu of all other taxes.

The views of the court in this case were well set forth by Judge Beck in these words:

To regulate or prohibit the taxation of the property of railroads by cities, is not the object of the statute. The rules of construction will not permit us to apply the law to an object not within its

scope. We therefore conclude that it cannot be extended to operate as a prohibition of the taxation of the property of railroads by the cities of the State.

The language of the limitation in the statute, that the taxes therein authorized 'shall be in lieu of all taxes for any and all purposes', while broad and general, must be confined to the object of the statute which, as we have seen, is the regulation of taxation for State and county purposes. The State and counties levy taxes for many purposes. Separate levies of different rates are made, to be paid into distinct funds, which are expended for different objects. The tax authorized in this case is intended to be in lieu of the taxes authorized for these purposes. This is the evident meaning of the language of the law in question. . . . The property of railroads being taxable, the city of Dubuque, under the express power to assess all taxable property, is lawfully empowered to levy taxes thereon. . . . The cities of the State through which railroads pass, or in which they terminate, have imposed upon them the burden of providing for the protection of railroad property. Expenditures of money are necessary, in the exercise of their police jurisdiction, to insure the protection thus imposed as a duty upon these municipalities. It is not at all reasonable that the legislature intended to take from the cities all power to raise revenue from this very property, the protection of which is duly charged upon them, and to require that the expenses incident to the discharge of this duty should be paid in the way of taxes by the holders of other property. Such unjust legislation, discriminating in favor of one class to the oppression of another, could never have been intended by the legislature.¹⁷⁰

This case referred to the bridge constructed by the plaintiff across the Mississippi River at Dubuque, and it was held that the city of Dubuque had a complete right under the law to tax this bridge on the same basis as other property within its corporate limits. At least three points in this decision of Judge Beck deserve special consideration. It was not the object of the law of 1868 to prohibit the taxation of railroads by cities, such act applying to the regulation of State and county taxes. Furthermore, the bridge

at Dubuque, although railroad property, was within the limits of the city, and therefore taxable. Finally, the Judge held that the cities had to expend large sums of money in protecting the property of railroads, and therefore to prohibit them from taxing such property would, in his opinion, be an unjust discrimination not contemplated by the legislature.¹⁷¹

Thus in December, 1871, after prolonged litigation the Supreme Court of Iowa finally granted to cities the right to tax railway terminals on the ground that the one per cent tax on gross earnings was merely in lieu of county and State taxes. It is a significant fact that the ink was scarcely dry upon this far reaching decision before the General Assembly of Iowa created an ad valorem system which again denied to cities this same right. Three years later in *City of Davenport vs. The C. R. I. & P. R. R. Co.*,¹⁷² when the question came up concerning the recovery of certain taxes levied for city purposes on the depot grounds, track, etc., of the defendant for the years 1867 to 1871, the court sustained the decision rendered in *Dunleith and Dubuque Bridge Co. vs. the City of Dubuque*.

The law that went into effect in 1872 has already been outlined and explained. Under this law a few cases of interest have come before the court, involving the following considerations: (1) the right of a municipality to levy taxes upon the real property of a railroad corporation; (2) the constitutionality of Section 9, Chapter 26, *Laws of the Fourteenth General Assembly*, 1872, which section exempted railroad companies from taxes already levied under the old gross receipts law; (3) the meaning of the term uniform taxation; and (4) the legal method of taxing bridges across the Mississippi and Missouri rivers.

As to the first point the court held in the *City of Dubuque vs. The C., D. & M. R. Co.*¹⁷³ that cities have the right to levy municipal rates upon railway property. The findings

of the court in this case are quite similar to the decisions already cited affirming this same view; but it should be noted that, while cities have this legal right under the new law, such right applies only to the actual mileage of main track under the so-called unitary system of valuation. The result is that cities by no means possess the power to tax all the railroad property within their limits. They may tax only the value of their main track as determined by the Executive Council.

It is thus apparent that under the law of 1872 and its judicial interpretation the cities of Iowa lost a substantial right which they would have enjoyed under the court's final interpretation of the gross receipts law. Under that law (the gross receipts law) and the decisions already outlined, the cities did have a complete legal right to tax their terminals while under the new law put into operation in 1872 they have a right to tax only a small fractional part of the same. This condition of affairs has caused and is still causing dissatisfaction in some of the cities of Iowa. The idea prevails that the amount received by cities from railway corporations does not compensate for the expense actually occasioned by the terminal facilities within the various municipalities.

The significance of the case last above cited warrants special reference to the facts and views of the court. The two railroad companies that were defendants in the case had large amounts of property in the city of Dubuque. The real estate, road-bed, and personal property of the companies, including the rolling stock, were assessed by the city of Dubuque, the same as individual property, not under the provisions of Chapter 26, *Laws of 1872*. The companies refused to pay this tax. Suit was brought by the city in the lower court, which held against the companies and to the effect that the law of 1872 was unconstitutional, being in contravention of that section of the Constitution which pro-

vides that "the property of all corporations for pecuniary profit, shall be subject to taxation, the same as that of individuals".¹⁷⁴ It was maintained by the court that the law of 1872 which provided for the valuation of railroad property under the "unit rule", thus spreading the valuation of city terminals through country districts, was plainly contrary to the spirit and intent of the Constitution.

Upon appeal the decision of the lower court was reversed — Judge Beck dissenting. The majority opinion was written by Judge Rothrock, who referred to *The Dunleith and Dubuque Bridge Co. vs. The City of Dubuque*,¹⁷⁵ in which the court had upheld the right of a city to levy a tax on real estate within its corporate limits, the act of 1868 providing for a levy of one per cent on gross earnings being merely in lieu of State and county taxes and having no reference to taxes for municipal purposes. The law, however, had changed. "The act of 1872, being the law now in question, made a radical change in the assessment and taxation of the property of railroad companies", providing for the valuation of railroad property by the Census Board according to the "unit rule" and on the basis of the number of miles of main track. To the argument of the appellee that the effect of said act was to tax railroad property in a different ratio than that of individuals, the Judge said that it was impossible to devise any system that would secure absolute equality.¹⁷⁶

Continuing, the court maintained that it was necessary to use different methods of assessment for different forms of property. The State had one method for national banks, another for express and telegraph companies, and a third for railroads. The right of the legislature to do this had again and again been upheld by the courts. Furthermore, "the power to tax implies a corresponding power to apportion such tax as the Legislature shall deem proper." Nor is it within the sphere of the court to deny this power.¹⁷⁷

In conclusion Judge Rothrock went even farther than the requirements of mere judicial interpretation and gave it as his opinion that a railroad must be considered as a unit and that the law of 1872 was wise and just, "considering the impracticability of arriving at anything like just results by leaving the assessment and valuation to be made by each township and city assessor in which the road may be in part situated."¹⁷⁸

The dissenting opinion of Judge Beck is exhaustive and very interesting from the standpoint of existing conditions. The attention of the reader is called to the *Notes and References* on this subject, where important extracts are quoted. It was argued that the act of 1872 deprived cities of the right to tax railroad property located within their limits, and that a city might have \$500,000 of such property and still be permitted to assess only \$20,000. This in his opinion was a violation of the Constitution which guaranteed to the cities the same rights in matters of taxation as to the counties and State.

It is true, said the Judge in conclusion, that the legislature has a right to use different methods of assessments as alleged by the defendants. "But this may not be done for the purpose of creating inequality of taxation. It may be done to promote equality, not to effect inequality."¹⁷⁹ What he objected to throughout the entire opinion was not the method of assessment as such, but rather the gross inequality in taxation resulting from a peculiar form of assessment. "The manner of assessing the valuation of the property", he continued, "may not be objectionable. Unequal taxation is forbidden by the Constitution."

Nevertheless the opinion of the lower court was reversed. It was decided that cities had the right to tax railroad property, but such tax must be levied on the basis of the valuations made by the Census Board. Judge Rothrock said that the act of 1872 "does not provide a special manner of

assessing the property of railway corporations as such, but rather of railroad property", and that the cities had but the rights acquired in the case of *The Dunleith and Dubuque Bridge Co. vs. the City of Dubuque*.

As to the constitutionality of Section 9, Chapter 26, *Laws of the Fourteenth General Assembly*, which reads: "every railroad company which shall have paid all taxes on gross earnings provided for by chapter 106, of the acts of the Thirteenth General Assembly, shall be released from the payment of all other taxes which may have been levied upon the road-bed, right of way, track, rolling stock, and necessary buildings for operating their road, and no taxes for prior years for State, county, municipal, or any other purpose, for which any tax can be levied under the laws of the State, up to the first day of January last, shall be collected from any such railroad company on such property,"¹⁸⁰ the court held in the *City of Davenport vs. the Chicago, Rock Island & Pacific Railroad Company*¹⁸¹ that said section was not constitutional. The court considered section nine a plain violation of the spirit and intent of the Constitution for the following reasons:

1. Independent of this provision of the Constitution, and by virtue of its general legislative authority, the General Assembly is vested with the power to subject all classes of property, including that of corporations, to taxation for proper purposes.

2. To give effect to this section of the Constitution it must be interpreted as imposing the *duty*, instead of simply granting the power, to tax the property of corporations for pecuniary profit, the same as that of individuals.

3. Their property should be taxed to the same extent, for the same purposes, and at the same rates as that of individuals.

4. The phrase 'railroad companies', in the act, is used synonymous with 'railroad corporations'. It was not the purpose of the act to release the taxes on railroad *property*, and not on railroad *corporations*.

Chief Justice Miller's conclusion was as follows:

The power of taxation reaches all classes of property alike, independently of this provision of the Constitution. We, therefore, conclude that since it must have been intended to give some force and effect to this section as a part of the fundamental law, it must be understood as a command to, and as enjoining it as a duty upon, the General Assembly, to provide by law for the taxation of the property of corporations for pecuniary profit the same as that of individuals. In other words, this clause *requires* the legislature to provide for the taxation of this class of property the same as that of individuals. . . . The laws then in force subjected the property of railroad corporations to taxation for municipal purposes the same as that of individuals [the time of the case of the Dunleith and Dubuque Bridge Co. vs. City of Dubuque, 32 Iowa, 437.] The act of the General Assembly under consideration interposes and declares that those railroad companies which shall have paid all taxes assessed against them for *other* purposes shall be *released* from these *city taxes*, which have been levied upon their road bed, right of way, tracks, rolling stock, and necessary buildings for operating their road, which would be otherwise subject to such taxation under the law. It seems very clear that here is a direct and palpable conflict between this act of the legislature and the constitutional provision requiring the property of these corporations to be taxed for the same purposes, and to the same extent as that of individuals. The effect of the act, if held valid, would be to *exempt* the property of railroad corporations situated in cities and incorporated towns from municipal taxes, while the property of individuals similarly situated would be subject thereto, which is the very result that was intended to be prevented by the framers of the constitution.¹⁸²

It will be observed that this case had in reality to deal with taxes under the gross receipts system of 1870 and not the ad valorem system of 1872. In attempting to exempt railroads from municipal taxes, if they had paid their gross earnings tax under Chapter 106 of the act of 1870, the legislature of 1872, by inserting section 9, had virtually attempted to nullify the findings of the court in *Dunleith and Dubuque Bridge Co. vs. The City of Dubuque*. Judge Mil-

ler very justly upheld the former decision and declared the section in controversy to be unconstitutional and void, a section which had met with decided opposition at the time the law was enacted.

The third point adjudicated by the courts is the question whether the constitutional provision requires uniformity in taxation — a matter of vital importance. The States quite generally hold that uniformity in taxation by no means implies uniformity in the method of assessment. In Iowa this same view has been expressed in a number of important decisions. In the *Central Iowa Railroad Company vs. the Board of Supervisors*, Judge Seevers rendered an opinion stating in the following explicit terms that uniformity in taxation alone is required and not uniformity in assessment:

All railway property is assessed by the same tribunal and in the same manner, and all such corporations have the same privileges and immunities, and are subject to the same burdens, so far as taxation is concerned. We think it is competent, and not in conflict with any provision of the constitution of this state or of the United States, for the state to provide that any particular class of property belonging to all corporations of the same character, and which possess the same rights and privileges, may be assessed in the same manner and by the same tribunal, and that the property of individuals and other corporations may be assessed by other officers and at different times.¹⁸³

Finally a subject of interest which has demanded judicial action has been the legal method of taxing bridges across the Mississippi and Missouri rivers. The meaning of the language of Section 1334 of the *Code* is obvious. It reads as follows:

On the first Monday in March in each year, the executive council shall assess all the property of each railway corporation in the state, excepting the lands, lots and other real estate belonging thereto not used in the operation of any railway, and excepting railway bridges across the Mississippi and Missouri rivers.¹⁸⁴

Certain railroad corporations, however, brought suit to test the meaning of this section, and the subject was finally adjudicated by the United States courts in two leading cases. In 1880 the Chicago, Milwaukee and St. Paul R. R. Co. constructed a bridge across the river at Sabula. At the time the act of 1872 was passed, bridges across the Mississippi and Missouri rivers were not owned by railroad corporations. They belonged to bridge companies. These companies charged toll of the railroads and paid the ordinary municipal taxes on their property. In a word, the bridges were thought of as something separate and distinct from the railroads using them. But when the Chicago, Milwaukee and St. Paul Railroad Company constructed its own bridge at Sabula, the company considered this bridge to be an inseparable part of their road, having value only as a portion of the general system. It was held that Section 10, referred to bridges owned by private corporations and not to bridges constructed and owned by a railroad company for its own use. The defendant maintained that the nature of the property rather than the ownership determined whether the said section applied. The United States Supreme Court rendered its decision in favor of the city of Sabula, holding that the city and not the State Census Board had a right to tax the bridge. The same opinion was rendered in *Union Pacific R. R. Co. vs. Pottawattamie County*. As a result all such bridges are now taxed the same as the property of individuals.¹⁸⁵

In conclusion, the two most important points to be noted in a judicial study of railway taxation are: first, after much litigation, the cities finally secured the right to tax railway terminals under the gross receipts system; and second, this right was immediately lost by the creation of an ad valorem system whereby railroad property is taxed on the basis of the "unit rule".

XXII

RAILWAY TAX DISTRIBUTION

In the previous chapters, the problem of railway tax distribution has been frequently mentioned. Reference has been made to it in newspaper editorials, in speeches in the legislature, in court decisions, and in executive documents. Indeed, the question of tax distribution is second to none in importance because it concerns the fundamental problem of equality and uniformity of taxation. The purpose of the present chapter is to collect and organize the data relative to the problem of railway tax distribution in Iowa, and to treat the same historically and critically. In doing this a slight repetition of facts which have already been mentioned in the preceding pages of the narrative is unavoidable, since these facts are a necessary background to any scientific presentation of the existing system of railway taxation. We cannot divorce ourselves from the past and hope to make any thorough treatment of industrial and social problems. What men have thought and written on the subject of railway taxation in this State during the past fifty years has a vital connection with the actual working of the system to-day and should be carefully analyzed by the student, by the citizen, and especially by the practical legislator.

From 1855 to 1862 the method of taxing railroads, as well as other corporations, was through the shares of the stockholders.¹⁸⁶ The tax on non-residents was to be paid at "either terminus of the structure"; and the county was the unit for collecting such taxes. Manifestly such a system was more or less crude and primitive, for it contained no provision for the equitable distribution of railroad taxes. This

was true of the taxes on resident and non-resident stockholders. Obviously the residence of a particular stockholder has no connection with the actual location of railroad property as between counties. In fact the *Code of 1851*, by which railroads were taxed, had been compiled some years before any railway line had been completed in the State.

That the application of the provisions of the *Code of 1851* to the taxation of the property of railway corporations soon became unsatisfactory is proved by the enactment of special legislation regarding non-resident stockholders and finally by the passage of the law of 1858.¹⁸⁷ By two successive special acts the legislature provided that the treasurer of Scott County should pay over to the treasurers of Cedar, Muscatine, and Johnson counties their portions of the tax received from the Mississippi and Missouri Railroad Company, such amounts being calculated on a mileage basis.¹⁸⁸ By the law of 1858 the non-resident tax, collected "in the county in which is situated their principal business office within this State", was to be distributed among the several counties in which railroads were situated "in proportion to the portion of such improvements situated in the several counties."¹⁸⁹ As practically all the stockholders at that time were non-residents, the method above outlined was fairly well suited to meet the then existing conditions.

Under the gross receipts law of 1862¹⁹⁰ the whole plan of railway tax distribution was radically changed. The county was no longer the unit of collection, that power being transferred to the State Treasurer, who after collecting the tax was required to pay over one-half to the several counties "in proportion to the number of miles of main track of road in each county."

This system of tax distribution had much to commend it during that early period of railway development. It

should be stated, however, that the provision retaining one-half of the proceeds in the State treasury, was due more to the necessities of war than to the recognition of any economic principle. The localities having considerable railroad property felt that they were entitled to more than half of the proceeds of railway taxation, but the matter received no serious attention by the legislature until the meeting of the Tenth General Assembly in 1864.¹⁹¹ It will be recalled by the reader that the right of localities to tax all the railroad property situated within their respective limits — a right demanded especially by the cities — was the basis of the agitation during the period from 1864 to 1872. Nothing was accomplished during the session of 1868; but in 1870 a compromise had to be made with those who demanded local taxation. By the law of 1870 only one-fifth of the tax was retained by the State, the remaining four-fifths being apportioned to the several counties in proportion to the number of miles of main track in each county as provided under the previous law.¹⁹² What the radicals demanded was a repeal of the gross receipts law and the taxation of railway corporations the same as the property of individuals. The reply to this demand from certain localities was the “four-fifths” clause.

But the palliative thus offered did not suffice. It was especially repugnant to the cities since the “four-fifths” of the revenue from the railroad tax went to the counties, and the Supreme Court had held that the gross receipts tax was in lieu of any and all taxes for State, county, and municipal purposes.¹⁹³ This prevented cities from taxing terminal facilities. While this right was acquired only a short time later through a reversal of the former court decision,¹⁹⁴ the agitation for reform continued and in fact became irresistible. How the compromise of 1870 and the final law of 1872 were passed, how the conflicting forces then prevailing in Iowa were so organized as to give the

people the form rather than the substance of what they had demanded, and finally, how the vote of rural members of the legislature was secured by spreading the value of millions of dollars invested in railroad terminals through the country districts under the "unit rule", thus depriving the cities of rights firmly established under a recent adjudication of the court, have been outlined in previous chapters.

In this connection the task is (1) to make a careful and statistical examination of the actual working of the present law from the standpoint of tax distribution, and (2) to trace the history of recent movements which have for their purpose some change in the existing system of distribution. As the principles of equity in taxation are central and pivotal under a democratic system of government, a careful study of the problem of tax distribution ought to appeal both to the general reader and to the scientific investigator.

In the process of railway taxation in Iowa the first step is the valuation of the various lines by the Executive Council. The method of arriving at such valuation by a consideration of gross receipts, net receipts, physical assets, and the like, has already been noted. The valuations thus made by the Executive Council on the unitary plan form the basis of tax levies in the various counties and lesser taxing districts of the State.

Table XXVII shows the character of the report made by the Executive Council to the county auditors. After railway valuations have been completed, reports are sent to the auditors of the various counties, setting forth the number of miles of road and assessed value per mile in their respective counties. The table shows the reports sent to Audubon, Fayette, and Union counties.

Audubon County has 28.22 miles of road with an assessed value of \$117,325. The county has only two lines

TABLE XXVII¹⁹⁵

LENGTH AND ASSESSED VALUE OF RAILROADS BY COUNTIES

NAMES OF COUNTIES AND RAILROADS	MILEAGE	ASSESSED VALUE PER MILE	TOTAL AS- SESSED VALUE
Andubon	28.22		\$117,325
Chicago, E. I. & P.			
Audubon Branch	16.23	4,200	68,166
Chicago, & N. W.			
Iowa Southwestern Branch	11.99	4,100	49,159
Fayette	133.161		650,041
Chicago G. W.			
Oelwein Branch	8.544	4,850	41,438
Burlington, Cedar Rapids & N. Milwaukee Branch ..	44.31	4,200	186,102
Burl. Cedar Rapids & N. Chi. Decorah & Minn. ....	.29	2,700	783
Chicago G. W.—Main Line	19.806	8,800	174,293
Chic. G. W.—South-western Branch	6.991	6,100	42,645
Chicago, M. & St. P.			
Volga Branch	16.20	3,500	56,700
Davenport & N. W.	37.02	4,000	148,080
Union	66.16		597,063
Chicago, B. & Q.			
Main Line	24.779	15,000	371,685
Creston Branch	10.742	5,100	54,784
Creston & Northern	8.152	4,100	33,423
Chicago G. W.— Southwestern Branch	22.487	6,100	137,171

of road — the Chicago, Rock Island & Pacific, and the Chicago and Northwestern, the former having 16.23 miles and the latter 11.99 miles. It will be noted that branch lines are also named, which as will be seen, form separate units. For example, Fayette County has seven different branch lines with valuations ranging from \$2,700 to \$8,800 per mile, while it has only three railway systems, namely, the Chicago, Great Western; Burlington, Cedar Rapids & Northern; and Chicago, Milwaukee and St.

Paul. Indeed, Fayette County is well supplied with roads, having a total of 133.161 miles valued at \$650,041. Union County has scarcely half the mileage of Fayette, but the assessed value of its lines reaches the large sum of \$597,063 — a fact which may be explained by the high valuation of \$15,000 per mile of the main line of the Chicago, Burlington & Quincy road.

Table XXVIII gives statistics showing the distribution of railway taxes in representative counties. This table enables the reader to see at a glance the problem of railway tax distribution as between counties. It shows, in the first place, miles of road, value, county rate, and amount of railway taxes received by ten different counties. It gives, in the second place, the total tax paid to the State by said counties, under the general property tax and the excess of said amount over railway taxes received. County and not township or city rates are here considered.

TABLE XXVIII¹⁹⁶

SHOWING MILES OF ROAD, VALUE, RATE, AND AMOUNT OF RAILWAY TAXES RECEIVED BY REPRESENTATIVE COUNTIES; ALSO AMOUNT OF ALL TAXES PAID BY SAID COUNTIES TO THE STATE, AND THE EXCESS OF SAID AMOUNT OVER RAILWAY TAXES RECEIVED

COUNTY	MILES OF ROAD	VALUE	COUNTY RATE IN MILLS	RAILWAY TAX RECEIVED	TOTAL TAX PAID TO STATE	EXCESS OF TOTAL TAX PAID OVER RAILWAY TAX RECEIVED
Adair	38.342	\$218,546	12.	\$ 2,622.55	\$19,623	\$17,000.45
Adams	29.862	409,023	13.1	5,358.20	17,497	12,138.80
Black Hawk	140.045	832,483	12.2	10,156.29	44,865	34,708.71
Clayton	132.28	704,699	11.	7,751.68	30,766	23,014.32
Fayette	131.161	650,041	12.3	7,995.50	27,997	20,001.50
Grundy	65.63	374,679	7.8	2,922.49	21,996	19,073.51
Muscatine	130.48	929,199	12.1	11,243.30	30,865	19,621.70
Union	66.16	597,063	14.6	8,717.11	20,628	11,910.89
Winnebago	58.55	260,446	11.5	2,995.12	23,189	20,193.88
Wright	130.088	633,169	12.9	8,167.88	22,741	14,573.12

Two points are clear from a study of this table. In the

first place, the distribution of railway taxes as between counties does not correspond with the wealth of such counties. It is a fair proposition to assume that any county supports railways in proportion to its wealth and population; but the amount of railway taxes received by no means follows this law. For example, the total tax paid by Adams County to the State is only \$17,497; but the amount received by this county from railways is \$5,358.20, leaving an amount of \$12,138.80 paid to the State over and above railway taxes received. Winnebago County receives only \$2,995.12 in railway taxes, and pays to the State under the general property tax \$23,189, leaving a net amount of \$20,193.88. The amount of railway taxes received by Adair, Grundy, and Winnebago counties is approximately one-seventh of the amount paid by those counties to the State.

On the other hand, the amount of railway taxes received by Adams, Muscatine, Union, and Wright counties is approximately one-third the amount paid by these counties to the State. While it is true that the State at large supports railroads on the basis of wealth and population it appears that Adair County receives in taxes from the railroads only \$2,622.55, while Union County receives \$8,717.11. In other words, the net amount paid by Adair County to the State is \$17,000.45, while that paid by Union County is only \$11,910.89. These are the conditions that Governors Merrill and Carpenter had in mind in 1872 when they stated that the law of 1870 worked injustice as between counties. Under that law four-fifths of the tax was paid over to the counties on a mileage basis, which, in the opinion of Merrill and Carpenter and of certain legislators, was a grossly unjust method of railway tax distribution. The present system which gives the counties the right to tax their mileage as valued by the Executive Council results in essentially the same injustice — a

point made clear by Table XXVIII. Counties support railways in proportion to their wealth and population and not in proportion to their mileage.

The second point revealed by the table under consideration is that the total amount of taxes paid to the State by the counties named is from three to seven times the amount of tax received by such counties from railway corporations. When this fact is noted the question naturally arises as to the probable attitude of the counties as such to any change of the existing system. The writer does not wish to express any opinion on this point, except to call attention to the chapter on *Comparative Study and the Problem of Tax Reform in Iowa*, which will deal with certain elements of the problem. It is sufficient to note at this time that a considerable group of States, including New York, Pennsylvania, and Wisconsin¹⁹⁷ derive their revenue from corporations and certain other supplementary taxes without recourse to the general property tax. Whether this could be done in Iowa is not a question of opinion, but rather a question for honest, thoughtful examination by a competent tax commission.

It may not be out of place, however, to mention certain facts that now exist. The general levy for State purposes was fixed at approximately \$2,250,000 for 1907, and the same amount for 1908.¹⁹⁸ According to the report of the Executive Council for 1908, approximately \$2,000,000 in railroad taxes were retained by the counties and lesser districts, such taxes being distributed in a manner which is the subject of the present inquiry. In case all of the railroad taxes were paid into the State Treasury, as a number of prominent men have recommended, there would still be a deficit of \$250,000 on the basis of the last general levy for State purposes.

As throwing light upon present conditions in Iowa, the last report of the Inter-State Commerce Commission af-

fords valuable statistical information. According to this report,¹⁹⁹ for the year ending June 30, 1906, the railroad tax per mile in certain States was as follows: Iowa, \$217; Wisconsin, \$387; Minnesota, \$389; Illinois, \$453; and Michigan, \$554. The latest report of the Executive Council of Iowa gives the rate in Iowa at \$225. Minnesota and Wisconsin, however, have both passed the \$400 mark. Thus it seems clear that the railroads of Iowa could pay an additional \$1,000,000 in taxes and still be paying \$75 per mile less than the railroads of Minnesota or Wisconsin. This would yield approximately \$750,000 more revenue from the railroads than was provided for in the general revenue act referred to above.

No definite conclusions, however, can or ought to be drawn from such comparisons. Authoritative deductions on such a problem are out of the question without a painstaking investigation of the whole field of Iowa taxation by a tax commission. All that can be said is that it may be possible to draft a just revenue law that will guarantee to the cities more rights than they now possess in regard to the taxation of railroad terminals to meet the expenses of light, fire, police protection, etc., and at the same time supply the fiscal wants of the State, and do this with very little recourse to the general property tax.²⁰⁰

Proceeding with an analysis of railway tax distribution, Tables XXIX and XXX will enable the reader to make a study of the problem in the lesser taxing districts of Audubon County. Table XXIX shows the character of the report made by the Board of Supervisors, setting forth the mileage, the assessed value per mile, and the total assessed value of railways in the various assessment districts of Audubon County for October 1, 1906.

This table shows that the County Board of Supervisors makes substantially the same kind of report for the use of their lesser taxing districts that the Executive Council

TABLE XXIX²⁰¹

REPORT OF BOARD OF SUPERVISORS OF AUDUBON COUNTY SETTING
FORTH MILEAGE AND ASSESSED VALUE OF RAILWAYS IN
THE VARIOUS ASSESSMENT DISTRICTS

NAME OF COMPANY	ASSESSMENT DISTRICT	No. MILES	VALUE PER MILE	TOTAL VALUE
C. R. I. & P. Ry. Co.	Leroy Twp.	1.07	\$4,200.00	\$ 4,494.00
	Audubon Ind. ....	.57	4,200.00	2,394.00
	Audubon Town ...	.83	4,200.00	3,486.00
	Hamlin Twp.	6.28	4,200.00	26,376.00
	Exira Twp.	3.33	4,200.00	13,886.00
	Exira Ind. ....	.63	4,200.00	2,646.00
	Exira Town ....	.674	4,200.00	2,831.00
	Oakfield Twp.	2.546	4,200.00	10,693.00
	Brayton Town ...	.30	4,200.00	1,260.00
	Totals	16.23	\$4,200.00	\$68,166.00
C. & N. W. Ry. Co.	Cameron Twp.	4.68	\$4,100.00	\$19,188.00
	Gray Ind.	1.72	4,100.00	7,052.00
	Gray Town	1.17	4,100.00	4,797.00
	Leroy Twp.	3.22	4,100.00	13,202.00
	Audubon Ind. ....	.67	4,100.00	2,747.00
	Audubon Town ...	.53	4,100.00	2,173.00
	Totals	11.99	\$4,100.00	\$49,159.00

makes for the counties as noted in Table XXVII. The Executive Council gives in its report the mileage, assessed value per mile, and total assessed value for each county; and the county board in turn does the same thing for the lesser taxing districts. In Audubon County there are two railroads — the Chicago, Rock Island & Pacific and the Chicago & North Western. Table XXIX shows the mileage, value per mile, and total value for each line in the various taxing districts of that County.

In Table XXX the statistics for the two lines are combined in order to simplify the problem of tax distribution. Columns one and two are obtained by merely adding the mileage and valuation given in Table XXIX. Column three shows the district tax rate in mills; but the rates

given do not include the county or State levies. The State levy was 3.5 mills and the county levy 12.7 mills. Column four shows the tax received in each district for district purposes.

TABLE XXX²⁰²

AUDUBON COUNTY — LESSER TAXING DISTRICTS, GIVING MILES OF ROAD, VALUE, RATE, AND TAX RECEIVED FROM RAILROADS,
COUNTY FINANCIAL REPORT, 1906

DISTRICT	MILES OF ROAD	VALUE	TAX RATE MILLS	TAX RECEIVED
Cameron Twp.	4.68	\$ 19,188	15.8	\$ 303.17
Exira Twp.	3.33	13,886	22.8	316.60
Hamlin Twp.	6.28	26,376	17.3	456.30
Leroy Twp.	4.29	17,696	18.8	244.20
Oakfield Twp.	2.546	10,693	18.8	201.03
Audubon Town	1.36	5,659	47.8	270.50
Exira Town ....	.674	2,831	44.3	125.41
Gray Town	1.17	4,797	32.8	157.34
Brayton Town ....	.30	1,260	22.8	28.73
Audubon Ind.	1.24	5,141	30.5	156.80
Exira Ind. ....	.63	2,646	31.2	82.55
Gray, Ind.	1.72	7,052	26.8	188.99
Total	28.22	\$117,325		\$2,531.62

N. B. Audubon, Douglass, Greeley, Lincoln, Melville, Sharon, and Viola townships have no railroads and hence receive no railway taxes.

A close examination of Table XXX reveals the same injustice between the lesser taxing districts or townships as is apparent between counties from a study of Table XXVIII. In the case of the townships, however, the injustice is even more pronounced. By reference to the railroad map of Iowa it will be seen that the two lines of railroad in Audubon County run practically north and south, and that there are twelve townships in the county, lying in three tiers of four each. Thus in Audubon County the railroads pass through the central tier of townships, and a small part of Oakfield or the southwestern township. In other words only five townships have any railroad, namely,

Cameron, Exira, Hamlin, Leroy, and Oakfield. The other seven townships possess no railway line. Yet these seven townships must ship their produce over the railroads passing through the other five townships and thus contribute to the income of those particular railroads. This means that the seven townships are compelled to suffer the inconvenience of not having railroads and at the same time they must indirectly help to pay the taxes of those townships and other districts enjoying railroad advantages.

But this is not all. A further study of the table shows that four townships, Cameron, Exira, Hamlin, and Leroy, have 18.58 miles of line, with \$77,146 assessed valuation and receive \$1,320.27 of railway taxes. Thus four townships have practically two-thirds of the mileage and assessed valuation of the entire county and receive a little more than half of the total railway taxes paid to the lesser districts. When we consider that the entire county supports the lines in proportion to its wealth and population, the injustice of such a system is apparent.

It may be alleged, however, that the case of Audubon County is exceptional and is, therefore, no indication of conditions throughout the State. In order to show that the present system of railway tax distribution as seen in Audubon County is typical and consequently illustrative of conditions that prevail in the counties of the State generally, a statistical study has been made of three representative counties, namely, Fayette, Pottawattamie, and Union.

Table XXXI has been compiled from the financial report of Fayette County for 1906.

Two points should be mentioned concerning Fayette County. First, it is a county of average wealth, the report of the State Treasurer for 1906 showing that it pays to the State almost exactly one-ninety-ninth of the total receipts from counties. In the second place, it is supplied with a

RAILWAY TAX DISTRIBUTION

127

TABLE XXXI²⁰³

AMOUNT OF TAX PAID BY THE RAILROADS IN THE VARIOUS ASSESSMENT DISTRICTS OF FAYETTE COUNTY, IOWA, FOR 1906. ALSO SHOWING TOTAL VALUE OF ALL PROPERTY AND TOTAL TAX PAID TO THE STATE BY SAID DISTRICTS

DISTRICT	TAXABLE VALUE OF RAILROADS	RAILROAD TAX PAID	VALUE OF ALL PROPERTY	TAX PAID TO STATE UNDER THE GENERAL PROPERTY TAX
Auburn			\$236,135	\$ 826.43
Banks	\$ 21,010	\$ 569.37	278,940	976.29
Bethel	17,084	480.06	257,163	900.07
Center	42,538	1,227.91	281,448	985.06
Clermont	29,822	757.94	241,898	846.64
Dover			243,311	851.58
Eden	24,206	758.91	265,502	929.26
Fairfield.....	18,124	678.76	252,477	883.68
Fremont	56,087	1,626.53	309,424	1,082.97
Harlan	21,542	679.59	260,595	912.09
Illyria	24,185	746.30	234,817	821.85
Jefferson	95,182	2,920.41	326,635	1,143.23
Oran	60,299	1,666.55	305,327	1,068.65
Pleasant Valley	31,387	1,057.42	235,021	822.57
Putnam	6,161	173.13	251,534	880.37
Scott	11,864	340.50	244,183	854.65
Smithfield	19,288	564.91	255,375	893.81
Union	37,436	1,072.37	306,000	1,071.00
Westfield	31,809	1,042.99	256,036	896.12
Windsor	24,293	720.03	272,937	955.28
Arlington	4,441	269.57	97,680	341.88
Clermont	3,133	105.90	65,758	230.15
Elgin	3,474	145.67	75,108	262.87
Fayette	4,681	275.71	162,553	568.94
Hawkeye	3,761	159.47	102,047	357.16
Maynard	4,162	207.68	55,751	195.13
Oelwein	31,297	2,166.50	513,691	1,797.92
Randalia	1,344	46.23	14,907	52.17
St. Lucas			15,033	52.62
Wadena	3,150	104.90	18,279	63.97
Wancoma	2,880	118.37	68,811	240.83
Westgate	7,690	286.07	65,170	228.09
West Union	6,846	432.00	379,192	1,327.18
Totals	\$649,175	\$21,401.74	\$6,948,788	\$24,320.56

fairly uniform system of railroads, only three tax districts being without railroad facilities — which represents an extremely uniform development. Yet an analysis of the statistics of Fayette County shows exactly the same conditions as regards railway tax distribution as are found to exist in Audubon County. The inequality may not be so evident on the surface, but it nevertheless exists in a striking degree.

Of the thirty-three tax districts represented in Table XXXI twenty are townships (Auburn to Windsor) and the remainder sub-districts of different classes. Two townships (namely, Auburn and Dover) have no railroads. Five townships (namely, Center, Fremont, Jefferson, Oran, and Union) have more railway tax valuation than the remaining fifteen. Nor is this all. The city of Oelwein, which is a railroad center, is located in the township of Jefferson. Oelwein has expensive terminals, but a small mileage of main track in comparison with the surrounding township. The result is that Jefferson has \$95,182 taxable valuation of railroad property; while the city of Oelwein with all its expensive terminal facilities has only \$31,297. In this way the railroads escape the high tax rate of Oelwein on their terminals, the value of such terminals being spread along the various lines and taxed at the much lower rural rates.

No better illustration could be given of the practical working of the compromise measure of 1872. A few townships in Fayette County gain special advantage at the expense of the city of Oelwein on the one hand and of the majority of country districts on the other. Center, Fremont, Jefferson, Oran, and Union are especially favored townships because they happen to have the largest railway mileage. Bethel, Fairfield, Harlan, Putnam, Scott, and Smithfield all combined have less railroad valuation than the single township of Jefferson.

The conditions which exist under the present law are still more impressive when one makes a critical examination of the data given in Table XXXI. Column two represents the total railroad tax paid — 3.5 mills which goes to the State, 12.3 mills to Fayette County, and the remainder to the district named. Column four represents the total property tax paid to the State according to the financial report of Fayette County for 1906. It will be noted from the table that the amount of railroad taxes paid in the townships of Center, Fremont, Jefferson and Oran is much larger than the total tax paid by said townships to the State under the general property tax. In three other townships the amounts are practically the same, but in the majority of townships the amount of railroad tax paid is less and in most cases very much less than the amount paid to the State. It should be mentioned that the amounts given in the favored townships must be somewhat reduced in order to give an entirely correct impression of the facts. In each district 15.8 mills on the taxable valuation goes to the State and county. This tax when redistributed benefits all the districts of the county in proportion to their wealth and population. To get an exact idea of the benefit accruing to a particular township, we must consider the amount directly received and in addition the sum indirectly received through the railroad tax going to the State and county.

This much is clear, however, that the five townships of Fayette County above mentioned receive as much or more in railroad taxes than they pay to the State under the general property tax. Jefferson township pays to the State only \$1,143.23. In this amount is included the 3.5 mills on railroads. The railroad tax paid in this township amounts to \$2,920.41. Deducting the amount going to the county, or \$1,170.73, we have left \$1,749.68 or \$606.45 more than the total amount the township pays to the State. In other

words Jefferson township virtually pays no State tax, and receives in addition a bonus of \$606.45 in railway taxes not considering the benefits indirectly received through the county tax. Is it just that one tax district in five throughout the State should be practically exempt from the payment of State taxes? Yet this appears to be the practical result of the administration of the present system of taxing railroads in Iowa. The minority of tax districts receive special benefits at the expense of the majority. Manifestly it is to the interests of a small minority to retain the present system since their taxes are being paid by the majority through freight and passenger rates — almost without a murmur.

Table XXXII has been prepared from the report of the County Board of Supervisors of Pottawattamie County for 1907.

TABLE XXXII³⁰⁴

**POTTAWATTAMIE COUNTY. SHOWING DISTRIBUTION OF
RAILWAY TAXES**

NAME OF DISTRICT	MILES OF ROAD	VALUE
Pottawattamie County	187.661	\$1,842,215
City of Council Bluffs	24.2427	454,928
County excluding Council Bluffs	163.4183	1,387,287
Five special districts	78.9193	728,007
Remaining 48 districts	74.499	659,280
Lewis Township	15.6573	117,440
Rockford Township	12.28	124,964
Norwalk Township	14.56	136,636
Crescent Township	12.25	124,141
Garner Township	24.172	224,826

N. B. The following are the township rates including the State and county rate of 15 mills—Lewis, 22; Rockford, 27; Norwalk, 27; Crescent, 32.75; and Garner, 23. The rate in Council Bluffs is 93.5 mills.

The total railroad mileage of Pottawattamie is 187.661, with a taxable valuation of \$1,842,215. Excluding the city of Council Bluffs, the county has 163.4183 miles of road with a tax valuation of \$1,387,287. It is also shown that

five townships have 78.9193 miles of road with \$728,007 of taxable valuation; while the remaining forty-eight tax districts have only 74.499 miles of road with a tax valuation of \$659,280. Table XXXII needs no further comment. The conditions noted in Fayette County are even more manifest in Pottawattamie. A small minority of tax districts reap special benefits; while the large majority haul their products a long distance to market and in turn receive little or no railroad tax.

Table XXXIII, taken from the financial report of Union County for 1906, shows the same conditions of inequality. This county has forty-five tax districts, with a total railway tax valuation of \$593,830. Of this number eighteen districts have no railroad and hence receive no railway taxes. On the other hand, four townships (namely, Jones, Union, Highland, and Douglass) have a taxable valuation of railroad property amounting to \$331,035, or more than half of the total valuation of the entire county. The township of Jones alone has more railroad property than fifteen of the other districts having this class of property.

Perhaps the most objectionable feature of the present railway tax law remains to be examined. It will be recalled that the law was a compromise between the railroads and the rural districts, by which the value of city terminals is spread along the lines through the "unit rule". In this way railroad corporations have escaped high city rates; but the history of the administration of the law does not at all demonstrate that the farmers as a whole have gained thereby. The tables for Union, Fayette, Pottawattamie, and Audubon counties show that only a few townships, and hence a small minority of farmers, enjoy special advantages in the administration of the present system. The country members were simply mistaken concerning their own interests when, in the Fourteenth General Assembly,

TABLE XXXIII²⁰⁵

TAXABLE VALUE AND TOTAL TAX OF UNION COUNTY IN 1906

	Real Estate	Personal	Railroad	Ex- press	Tele- graph	Tele- phone	Total
Pleasant.....	\$ 141,406	\$ 18,980	.....	.....	.....	\$ 318	\$ 160,700
Jones.....	119,370	24,566	\$ 90,611	\$ 313	\$ 314	1,376	236,450
Thayer.....	3,766	1,705	3,984	9	.....	.....	9,464
Thayer Lands.....	43,388	853	27,767	65	.....	136	71,178
New Hope.....	175,559	24,562	26,466	153	284	381	227,435
Lorimor.....	41,842	29,331	1,875	11	20	181	72,760
Lorimor Lands.....	33,631	5,782	11,063	64	119	6	49,664
Sand Creek No. 1.....	15,968	1,571	.....	.....	.....	.....	17,559
2.....	16,959	1,668	12,672	78	146	65	32,468
3.....	20,262	2,700	5,516	32	59	115	28,684
4.....	21,760	2,734	8,915	52	96	97	33,654
5.....	20,736	4,912	.....	.....	.....	23	31,648
6.....	24,866	5,867	.....	.....	.....	20	30,733
7.....	24,351	4,152	.....	.....	.....	24	28,503
8.....	25,381	2,746	.....	.....	.....	32	28,127
9.....	25,089	3,729	.....	.....	.....	66	28,818
Arispe.....	9,135	8,036	2,968	17	32	.....	30,206
Arispe Lands.....	3,757	1,136	966	6	11	.....	5,905
Union.....	155,783	28,234	80,577	257	212	1,462	265,825
Afton Independent.....	13,373	2,081	14,692	34	.....	6	30,186
Afton.....	70,297	66,719	15,189	36	.....	135	152,696
Afton Lands.....	4,935	3,273	.....	.....	.....	.....	8,208
Dodge.....	197,604	35,267	.....	.....	.....	703	233,574
Grant No. 1.....	20,129	3,933	.....	.....	.....	21	24,083
2.....	23,665	4,812	.....	.....	.....	183	28,660
3.....	24,393	3,232	.....	.....	.....	183	28,818
4.....	20,946	2,944	.....	.....	.....	.....	23,890
5.....	21,272	2,615	.....	.....	.....	30	23,887
6.....	20,812	4,173	2,328	13	25	30	27,382
7.....	19,960	3,872	11,406	66	123	78	35,406
8.....	20,737	3,866	.....	.....	.....	66	24,603
9.....	23,379	5,169	.....	.....	.....	58	28,606
Shannon City.....	19,782	14,417	.....	.....	.....	100	33,999
Shannon Lands.....	2,346	421	1,890	11	20	.....	4,658
Highland.....	205,081	35,584	80,528	199	.....	1,898	323,280
Lincoln.....	200,315	37,255	16,822	144	308	2,370	257,214
Platte.....	184,069	30,391	7,996	55	116	522	223,609
Kent.....	12,693	14,030	1,275	9	173	48	28,228
Kent Ind.....	27,954	4,733	11,765	81	19	18	44,570
Douglass.....	166,658	21,999	79,019	306	392	1,271	269,745
Cromwell.....	17,427	17,405	7,788	18	.....	135	42,773
Cromwell Ind.....	28,654	6,309	4,192	10	.....	145	39,310
Spaulding.....	236,019	42,324	11,152	95	204	2,302	292,096
Creston.....	501,633	174,159	53,262	190	204	1,929	731,377
Creston Lands.....	22,813	6,351	.....	.....	.....	.....	29,164
Total.....	\$3,039,341	\$ 706,621	\$ 593,830	\$2,315	\$2,867	\$ 17,436	\$4,362,410

Total tax levied in 1906... \$211,471.62

Total tax levied in 1905.... 202,992.81

Total tax levied in 1904.... 195,913.28

they voted for the present law. As a matter of fact the railroads, by escaping high municipal rates on expensive terminals, and a minority of townships are really the only parties that have been benefited. The farmers have acquiesced in this condition of affairs, and the cities have up to date been unable to obtain relief.

The condition of the cities under the present law should receive special attention. It was noted above that when the measure passed, the large cities were against it. They had gained the right to tax terminal facilities under the gross receipts system, and they did not wish to be deprived of their right by the new legislation. The editorial in the *Burlington Hawk-Eye* entitled *The House Bill of Abominations* was a strong expression of the injustice felt by the cities at that time. They felt that railway terminals enjoyed municipal advantages and protection, and should be required to pay their part for such services. It has already been noted that the township of Jefferson in Fayette County has more than three times the tax valuation of the city of Oelwein; and yet Oelwein with its terminal facilities has far more railroad property than the township of Jefferson. This point is well explained by the following table which has been compiled from the municipal reports of Council Bluffs for 1907.

TABLE XXXIV ²⁰⁶

TAXES PAID BY RAILROADS TO THE CITY OF COUNCIL BLUFFS

NAME OF ROAD	MILEAGE	AMOUNT OF TAX
Union Pacific Railway Co.	3.78	\$20,381.00
Chicago & Northwestern Railway Co.	3.30	3,789.80
Chicago, Burlington & Quincy Railway Co.	2.6887	1,650.42
Chicago, Milwaukee & St. Paul Railway Co.	2.52	2,005.25
Chicago & Great Western Railway Co.	2.954	1,068.93
Chicago, Rock Island & Pacific Railway Co.	2.30	1,935.80
Illinois Central Railway Co.	4.32	1,374.32
Wabash Railway Co.	1.88	697.52
Omaha Bridge & Terminal Railway Co. ....	.50	260.25
Total	24.2427	\$33,163.29

The above table shows that nine railroads enter Council Bluffs. Moreover, the Union Pacific occupies a different position than the others, since all the mileage which it has in Iowa is in the city of Council Bluffs. Hence the full value of the Union Pacific terminals is taxed within the city, with the result that this particular road pays \$20,381 taxes to the city, while the other eight roads taken together pay only the small sum of \$12,782.29. The Chicago, Burlington & Quincy pays only \$1,650.42 and the Chicago & Great Western only \$1,068.93. The small tax paid by these roads despite the fact that they possess expensive terminals is of course due to the "unit rule" of valuation.

Mr. F. T. True, City Treasurer of Council Bluffs, in his report for 1907 says:

With the exception of the Union Pacific Railway, there is not a road entering Council Bluffs, whose tax, combined with the taxes received from the homes of its employees, would be sufficient to pay the one item of expense to the city of educating the children of the said employees, at \$21.65 for each child actually in school, the cost in Council Bluffs, and the cost here is less than in many Iowa cities.

The nine railroads of the city pay only eleven per cent of the city taxes, six and one-half per cent being paid by the Union Pacific road alone, and the remaining eight lines paying only four and one-half per cent. Mr. True estimates that the city should receive at least fifty thousand dollars more taxes from railroads.

The League of Iowa Municipalities at its meeting in September, 1907, passed a resolution favoring an amendment to the present law whereby cities would be given the right to tax railway terminals. Nebraska and South Dakota have recently passed such a law, after a long period of agitation. The Nebraska law provides in part as follows:

Section 1. Every person, company or corporation owning, managing, or operating a railroad, union station or depot in this state also every car company and freight line company operating cars or doing business in the State of Nebraska shall cause all its taxable property to be listed for the purpose of local taxation by cities and villages, with reference to its amount, kind and value on the first day of March of the year in which it is listed.

Section 2. The local assessor for each city and village as now provided by law, or as may hereafter be provided, and the State Board of Equalization and Assessment shall be the assessing officers on behalf of such city or village and shall make an annual assessment of the property of all railroad companies, union station and depot companies, car companies, and freight line companies within their several jurisdictions for the purpose of levying city and village taxes thereon, as hereinafter provided.²⁰⁷

The Auditor of South Dakota in referring to the law recently enacted writes:

The recent session of the legislature of this state provided that all railroad property located in each organized city or town should be assessed the same as other property, and not upon a mileage basis, so that a town having a large amount of railroad property would receive the full amount of assessment on the value of such property and the amount would not be distributed along the total mileage of the road as has formerly been the case. This is one of the complaints that has often been made against the former assessments in this state.²⁰⁸

The February, 1908, number of *Midland Municipalities* (a journal devoted to the interests of city government) contains two interesting articles on the subject under consideration. One article, entitled *Municipal Taxation of Railways*, is by Mr. H. T. Clarke, a member of the Railway Commission of Nebraska; the other, entitled *The Revenues of the Municipality*, is by Mr. F. T. True, City Treasurer of Council Bluffs. The purpose of both papers is to make out a strong case for the cities.²⁰⁹

Mr. Clarke begins with an examination of the "unit

rule" in its application to cities. Out of every ten miles of main track, he says that only one is located in the cities — the remaining nine miles are located in the country. Moreover, in the cities there are many forms of service and expense that do not exist in the country — for example, fire, light, police, sewerage, and water. The large expenses resulting from these services must be met by the property owners of the various cities. If a part of the property in such cities pays no taxes, it merely means a higher rate for the other property holders; and this is precisely what happens to the cities when the value of city terminals is spread over the country. A large amount of property brings no revenue to the city: it is so much dead property from the standpoint of municipal taxation. In fact it is worse than dead property as it causes additional expense which must be met by the other property holders.

The paper then reviews the long struggle in Nebraska to secure a terminal law, where an unsuccessful effort was made twenty years ago. Six years ago, according to Mr. Clarke, the Union Pacific Railroad in Omaha was valued at less than seventy thousand dollars under the "unit rule", and paid a tax amounting to less than a thousand dollars — a sum smaller than the average bank was paying on one lot and a banking building. This was true despite the fact that in 1894 the chief engineer of the Union Pacific road testified that the terminals of that road in Omaha were worth ten millions of dollars and in fact could not be bought for fifteen millions. By 1901 the people began to realize the condition of affairs. The idea that fifteen million dollars worth of property should not furnish enough taxes to pay the salary of one policeman did not appeal to the people of Omaha. In 1903 a bill was introduced to tax railway terminals and was defeated by the railroads who led the people to believe that it would benefit Omaha alone. In 1905 a similar bill was defeated; but the legislature of 1907 finally passed such a measure.

It should not be forgotten, however, that injustice to cities is not the only objection, in some respects not the chief objection, to the present railway taxation law. There may be a grave question about the advisability of enacting a terminal tax law in Iowa without at the same time making a complete revision of the whole system. The whole scheme of tax distribution under this law results in inequality. Four typical counties have been examined statistically, and in each case with the same results — only a small minority of the country districts gain any special advantage. The advantage they gain is paid for by the majority of country districts on the one hand, and by the cities on the other.

More than a third of the counties of Iowa have been critically examined in the preparation of this chapter, and in some cases with results more striking than those presented in the tables. In addition, the writer has carefully examined the ninety-nine county maps in the Iowa Atlas for 1904. There are approximately sixteen hundred civil townships in Iowa. Of this number four hundred are absolutely without railroad lines. On the other hand, about four hundred others, by a careful count, possess the bulk of railroad mileage and thus reap the benefits under the present law. The remaining eight hundred possess a small mileage. In a word, a careful examination of the railroad map for all the counties of the State merely substantiates the conclusions reached by a statistical study of representative counties. As a result of this research it can be said without fear of successful contradiction that, under the existing railroad tax law in Iowa, twenty-five per cent of the townships are receiving the bulk of local railroad taxes. These taxes are paid indirectly by the remaining townships when they haul produce to the market and purchase goods.

Mr. True is probably mistaken when he assumes that the country law-makers will oppose any legitimate reform

of the tax system. The majority of country districts have as much reason to oppose the present system and support a rational scheme of taxation as the cities. And from the standpoint of the practical legislator this is a vital consideration. It requires votes to pass laws. If a majority of the country members can be made to understand that their interests are in common with the members from the cities, the pathway of wise reform will not be difficult to travel. The interests of the country and the cities are common, and the welfare of both can best be conserved by wise laws and a just administration. To preach an opposite doctrine will in the end benefit no interest, be that interest corporate or individual.

At the last session of the General Assembly a terminal tax bill was introduced by Senator Saunders of Council Bluffs,²¹⁰ which provided for the assessment of "all the trackage, including main, second main, spur, side, switch, and terminal tracks and turnouts", and the taxation of the same where located. Branch lines were to be assessed separate from the main line. The bill if enacted into law would have preserved the unit rule of valuation, but with the following modifications: first, the value as determined by the Executive Council would have been spread over all the line including side track, spurs, terminal tracks, etc., thus making a substantial reduction in the assessment per mile; second, the cities would have received a greatly increased mileage valuation; and finally the main track assessment through the rural districts would have been diminished in like proportion. The result was just what the reader would anticipate. That interesting alliance of the railroads and the rural members, the familiar story of 1872, made its passage impossible. Out of courtesy to Senator Saunders, a man of the highest ability and integrity, the bill was reported out of the committee without recommendation, only to be defeated by a large majority.²¹¹

Thus the problem of railway tax distribution in Iowa has been reviewed historically and critically. The character of the various systems has been analyzed and their origin traced. The present system, instituted in 1872, has been studied in relation to the cities on the one hand and to the country districts on the other. That this law is neither beneficial to the cities nor to a majority of the country districts is apparent. That it favors simply a minority of country districts and the railroads is equally certain.

It would be a mistake to assume, however, that at least a small group of men have not been conscious of these conditions. Nor have the cities been alone in their criticism of the law. They have criticised certain features of the measure, and are now seeking for at least a partial reform. But the law as a whole in its general administration has been brought before the public on more than one occasion by men high in authority.

The Board of Railroad Commissioners have referred to it at various times, and in their ninth annual report, submitted to Governor Larrabee, November 30, 1886, we find a thorough discussion of the law.²¹² Two important points are noted by the Commission: first, that the theory of the law rests valuation substantially on gross receipts; and second, that municipalities are placed at a peculiar disadvantage. The Commission at this time believed that a tax on gross earnings "would be the simplest and fairest method of reaching railroad taxation in the State," and concluded with the following interesting statement:

We learn from a source that we regard as entirely reliable that the reason the tax law was passed in its present form, was the determined efforts of some of the cities on the Mississippi river to have taxed within their respective limits all the rolling stock and other property of the roads, leaving for taxation outside the cities merely the road bed and superstructure. This was thought unfair to the rural districts and the reaction induced the passage of the present law.

In conclusion the writer has no knowledge of a more comprehensive, fair-minded statement of the central thought presented in this chapter than may be found in the biennial message of Governor Newbold, submitted January 15, 1878. The Governor said in part:

While upon this subject it is proper to invite your attention to the inequalities connected with the present mode of taxing this class of property. This mode is based upon the theory that a railroad is one piece of property, and is of equal value along its entire line. It does not take into consideration the burdens imposed upon municipalities in affording fire and police protection to this property, nor the other expenses of local government. All other property not entirely exempt is compelled to bear its just proportion of such burdens, and no good reason can be assigned for the release of railroad property therefrom. I am aware of the argument that the entire country through which a road runs contributes to its business, and that each locality has a right to share equally per mile in the revenues derived therefrom to the extent, at least, of its own levies. This argument proves too much. If all that contribute to the business of railroads are to participate equally in the taxes derived therefrom, those counties and townships which themselves have no railroads, but whose traffic is constantly poured into the neighboring counties for transshipment, have perhaps even better claim to participate in this character of revenue, because the business they bring to the road costs them more than it does their more fortunate neighbors directly on the iron way. To be logical the present law should be so amended as to direct the entire railroad tax into the state treasury. Then, as all the state contributes to the business of railroads, so all the state would participate in the revenue derived from the taxes on railroads. It is proper that the rolling stock should be considered as belonging to the entire line, and the valuation thereof apportioned *pro rata*; and perhaps the right of way and track should be so estimated. But all other railroad property ought to be assessed, valued, and taxed in the same manner as that of the neighboring mechanic, merchant or farmer.²¹³

XXIII

COMPARATIVE STUDY OF RAILWAY TAXATION

A study of railway taxation in any State of the Union would be incomplete without some reference to the methods employed in other Commonwealths. It is not the present purpose, however, to make a critical and exhaustive study of this problem in the various States — such a task would require volumes. All that will be attempted in this connection is to make a brief examination of the various systems of taxation and note the bearing of certain facts analyzed in these pages upon conditions which still exist in the majority of States.

Excluding Alaska and including the District of Columbia, the fifty States and Territories present almost as many schemes for taxing railroad corporations. If what the student desires is variety, an investigation of this problem ought to satisfy all his demands.²¹⁴ In order to make satisfactory comparisons of the different methods of taxing railroads at least three factors must receive consideration, namely, the method of taxation, the method of assessment, and the method of tax distribution. Two States may have the same method of assessment, and yet their methods of taxation be entirely different. In one State both the assessment and taxation may be a State function. In another State the assessment may be made by a State board, and the taxation be left to the local units through which the roads happen to pass.²¹⁵ And again, the methods of assessment and taxation may be practically the same in two States, and yet the systems be very different when judged from the standpoint of distribution. One State may keep all taxes on rail-

roads in its own treasury, and the other distribute a portion to the local units. When all three factors are considered — assessment, taxation, and distribution — no two States present systems that are exactly identical. And so one may find a large number of different systems of railway taxation in the United States; the number of plans revealed will depend upon the character of the classification made. But elaborate classifications unless carefully made are simply misleading since they present only half truths.

In the wilderness of details furnished by the different States, there are, nevertheless, a few common principles; and the ends arrived at by the lawmakers are much the same in all the States. The idea of uniformity in taxation is a universal principle which works itself out more or less perfectly in the various States and lesser units according to the character of the tax laws and the efficiency of their administration. The principle which underlies uniformity in taxation is quite generally held to be "ability to pay". But, "ability to pay", which is a fundamental principle in any just scheme of taxation, is a phrase which needs to be defined. Ability to pay may have reference to "value" or "earnings" hence an *ad valorem* tax or a tax on earnings. In either case the fifty States and Territories attempt to tax the wealth of railroads and other corporations if not on the same basis, at least in some relation to the wealth of individuals. Thus, amid diversity of assessment, taxation, and distribution there is a certain essential unity, which should not be overlooked either by the tax administrator or the student of finance.

Table XXXV, taken from the statistics of railways in the *Nineteenth Annual Report of the Interstate Commerce Commission* for the year ending June 30, 1906,²¹⁶ gives the different methods of railway taxation in vogue in the various States, and the amount of taxes received under each method.

TABLE XXXV²¹⁶

ANALYSIS OF TAXES BY STATES AND TERRITORIES, SHOWING THE
BASIS OF PAYMENTS ACCORDING TO THE VARIOUS LAWS
UNDER WHICH RAILWAYS ARE TAXED

STATE OR TERRITORY	AD VALOREM TAX		SPECIFIC TAX			On property owned not used in operation and miscella- neous	Un- classi- fied
	On the value of real and personal property	On the value of stocks or bonds, or on valu- ation based on earnings, dividends or other results of operation	On stocks, bonds, loans, etc.	On gross or net earnings, revenue or divi- dends	On traffic or some physical quality of property operated, or on privilege		
Alabama.....	\$ 826,661			\$13,800	\$12,174	\$6,880	
Arkansas.....	909,596					330	
California.....	1,529,706	\$108			669	122,192	
Colorado.....	1,412,736		\$ 280			7,410	
Connecticut.....	56,212	1,170,791			119	14,558	
Delaware.....	24,519	500	21		78,326	598	
Florida.....	581,067				180	2,521	
Georgia.....	944,496	949		3,537	1,839	2,908	
Idaho.....	375,621					867	
Illinois.....	4,160,283			1,147,625		80,417	
Indiana.....	3,188,442					26,949	
Iowa.....	2,137,146					9,153	
Kansas.....	2,709,479					806	
Kentucky.....	949,213	242,069				572	3,705
Louisiana.....	869,300				10,917	3,003	
Maine.....	80,106			424,212		8,743	264
Maryland.....	279,467		87,426	442,586	308	32,418	25
Massachusetts.....	1,883,784	1,946,615	525	14,300	51	100,457	
Michigan.....	4,534,094		25,171			25,458	
Minnesota.....	11,210			2,994,709		68,387	
Mississippi.....	621,527				79,210	1,226	
Missouri.....	1,638,082					4,568	
Montana.....	782,404			225		2,096	
Nebraska.....	1,387,222	160				1,791	
Nevada.....	272,039					40,004	
New Hampshire.....	397,107					13,994	
New Jersey.....	1,780,697	477,886	100		3,237	61,368	
New York.....	4,322,946	666,620	79,094	338,555	25,861	86,235	2,475
North Carolina.....	663,617				18,116	4,181	
North Dakota.....	968,126					3,181	
Ohio.....	3,271,827		10	1,249,842	2	162,203	2,065
Oregon.....	349,823		200		505	7,203	
Pennsylvania.....	311,174	4,014,704	231,252	873,307	114	349,898	2,524
Rhode Island.....	233,999					1,014	
South Carolina.....	490,244			17,362	8,218	3,617	8,918
South Dakota.....	338,003						
Tennessee.....	909,104				11,662		
Texas.....	1,328,117	6,527	10,027	62,947	55	6,620	8,472
Utah.....	545,136					4,259	
Vermont.....	256		2,957	164,019		2,408	590

TABLE XXXV—CONTINUED

STATE OR TERRITORY	AD VALOREM TAX		SPECIFIC TAX			On property owned not used in operation and miscella- neous	Un- classi- fied
	On the value of real and personal property	On the value of stocks or bonds, or on valu- ation based on earnings, divid'nds or other results of operation	On stocks, bonds, loans, etc.	On gross or net earnings, revenue, or divi- dends	On traffic or some physical quality of property operated, or on privilege		
Virginia.....	\$918,715	.....	\$900	\$353,757	.....	\$,805	.....
Washington.....	1,055,950	.....	.....	.....	.....	108,402	.....
West Virginia.....	594,477	.....	11,342	.....	10	12,143	4,865
Wisconsin.....	1,901,411	.....	.....	780,065	1,341	23,884	.....
Wyoming.....	205,445	.....	.....	.....	.....	.....	.....
Arizona.....	230,961	.....	.....	.....	.....	1,582	.....
Dist. of Columbia.....	22,506	.....	.....	.....	.....	9,877	.....
Ind. Territory.....	34,406	.....	.....	.....	172	.....	.....
New Mexico.....	309,565	.....	.....	.....	.....	.....	.....
Oklahoma.....	591,202	.....	.....	.....	.....	.....	.....
Total.....	\$ 54,261,201	\$3,547,798	\$1,149,305	\$8,882,138	\$ 253,005	\$1,479,221	29,503

A glance at this table shows the relative importance of the ad valorem tax — especially that type of ad valorem tax which is based directly on the value of real and personal property. The tax received under this one system reaches the enormous sum of \$54,261,201. Add to this the property tax based on the value of stocks and bonds, or on a valuation reached through some form of earnings, and we have a total of \$62,808,999 in ad valorem taxes. These figures are significant when we consider that only \$11,793,172 is received by the remaining methods. The amount raised by a specific tax, based on stocks, bonds, loans, etc., is only \$1,149,305. The specific tax based on earnings, however, is of greater importance, the revenue due to that form of taxation being \$8,882,138. Another interesting point brought out by the table is the tax on property not used in operation, which amount is only \$1,479,221.

A further study of the table reveals the relative importance of the different methods in each State and Territory.

It is a striking fact that the ad valorem tax is the most important in forty-five Commonwealths. Of this number, three States (namely, Connecticut, Massachusetts, and Pennsylvania) arrive at a value through the stock and bond method. The statistician of the Interstate Commerce Commission, Dr. H. C. Adams (one of the leading American authorities on taxation) has again and again emphasized the relative importance of the property tax. He includes Delaware and Vermont in the list of States that tax according to value, thus leaving only three States (Maine, Maryland, and Minnesota) whose taxes are collected on earnings.

The table under consideration, however, gives Delaware as the only State receiving the largest revenue from railroads in the form of a specific tax based "on traffic or some physical quality of property operated or on privilege". Railroads in Vermont have an option between the gross earnings and the ad valorem tax. They may pay seven-tenths per cent on their property or two and one-half per cent on their gross earnings.²¹⁷ The statistics would indicate that the majority of roads in the State prefer the gross earnings tax. That collected under the ad valorem tax amounts to the insignificant sum of \$256. Mr. Adams, however, is doubtless correct in his statement that what they really desire to ascertain in both Vermont and Delaware is the value of the property. Yet it is equally true that the same may be said of Maine, Maryland, and Massachusetts. A gross receipts tax is simply one method of obtaining from railway corporations what is so glibly spoken of as "their just share of the public burdens."

The fact is that practically all the States and Territories make an effort to ascertain railroad values and tax on the basis of such values. It is equally true that in the majority of States such values are obtained either tacitly or openly through some process of capitalization. This furnishes an interesting paradox to the student of American finance, the

explanation of which is not difficult. The people whose views find expression in legislation emphasize "value", while tax administrators in their dealings with railroads are obliged from the very nature of things to give chief consideration to "earnings" as the most important index of value.

To speak more specifically of the various systems of railway taxation, it should be noted that forty-two of the States and Territories still tax railroads on the value of their real and personal property. The Ontario Commission in its *Report on Railway Taxation for 1905*, and the California Commission in its *Report on Revenue and Taxation for 1906*, both recognize the significance of this fact. These commissions made a careful and exhaustive examination of the subject of railway taxation. On this particular point the California Commission says that in "the great majority of states railroads are still taxed in the same manner as are individuals; that is, on their general property; but in almost all instances special methods have been devised for the application of the general property tax to railroads."²¹⁸

The question arises, what are these methods? How is the general property tax operated in the forty-two States and Territories where it is in vogue? In answering these questions the first thing to consider is the assessment, which in an early day was quite generally in the hands of local assessors. Rhode Island is the only State still retaining this antiquated system.²¹⁹ In all of the remaining States the assessment is made by some form of central board, which may and ought to be an efficient tax commission. Indeed, the States that have really accomplished anything have such commissions. The central board, however, in many States consists of three or four leading State officers, who in the time allotted them can at best perform their duties in only a perfunctory manner. In Ohio the assessment of each road is made by a board of county auditors from the counties through which such road passes.²²⁰ It is thus clear that the

arguments in the foregoing chapters, favoring a central board of assessment for Iowa, have prevailed in all States except Rhode Island.

The next consideration is the actual method of taxation in the States and Territories where the general property tax prevails. In a few States, like Michigan and Wisconsin, the tax is paid directly to the State and used for State purposes. In New Jersey it is paid to the State and a part redistributed to the local units. But in the great majority of cases the valuation made by the central board under the so-called "unit rule" is distributed to the localities on a mileage basis, where taxes are collected by the localities the same as on other property. This is true in Iowa; and in fact some form of this system prevails in about three-fourths of the States and Territories, thus showing how tenaciously the American people have held to the general property tax.

Turning again to the table, it is seen that three States (Connecticut, Massachusetts, and Pennsylvania) derive the larger part of their revenue from railroads by a tax based on the stock and bond method of valuation. In Massachusetts, however, the value of bonds is not considered. That State levies a local tax on "real estate, machinery, and merchandise", and a State tax on "corporate excess". By "corporate excess" is meant the value of the stocks minus the value of the real estate. In Massachusetts this system is less faulty than it would be in the majority of States, for the simple reason that the bonded debt is relatively small. The California Commission points out that such a system would be utterly impractical in States where railroads are financed chiefly through bonds. In Connecticut, which affords the best example of a stock and bond method of valuation, a one per cent tax is levied on the market value of the stock plus the par value of the funded or floating debt. In Pennsylvania there is a tax of five mills on stock and four

mills on bonds held by residents. The tax on non-resident bond holders has been declared unconstitutional.²²¹

Passing to the form of taxation on the basis of earnings, it is seen, according to the table, that this method predominates in four States — Maine, Maryland, Minnesota, and Vermont. In Vermont, however, as already noted, the railroads may pay seven-tenths per cent ad valorem tax. It is evident that the companies prefer to pay two and one-half per cent on their gross earnings.

Minnesota affords no doubt the best example of the gross receipts tax. Such a form of taxation has been in vogue in that State for over thirty years. It is in lieu of all other taxes on property used in operating the roads and is a State tax. Cities and other local units have a right to tax only that property which is not used in actual operation. That this is a small item is evident from the table, such tax on property not used in actual operation being only \$68,387. The tax rate is now four per cent on gross earnings, and according to the recent report of the Minnesota Tax Commission yields the enormous amount of \$3,270,336.63 or more than \$400 per mile.²²² Another interesting feature of the Minnesota law is the method of ascertaining gross earnings on interstate commerce. Companies are required to report all earnings from business beginning and terminating in the State, and also that proportion of the earnings from interstate business which may rightfully be considered to belong to the State. The method of determining this proportion is instructive. Mr. Staples explained the Minnesota definition of the "unit rule" to the Ontario Tax Commissioner as follows:

In Minnesota we take every shipment by itself over each line, no matter where it originates; if it goes into Minnesota or through Minnesota, even if only one mile, the tax is the proportion of that one mile to the total mileage of the shipment. Take as illustration a shipment over 180 miles of road, of which seven miles is in

Minnesota; the assessment would be 7-180 of the total charges. In its report the railway must show the entire gross earnings of the entire system, but of course if a shipment originated in Winnipeg and went down, say 100 miles, not touching Minnesota, we have nothing to do with that for taxation purposes. We only assess those shipments in which we are interested, that is, those shipments which touch Minnesota.²²⁸

The California Commission was impressed with this method of determining gross receipts from interstate commerce and has recommended its adoption. The mileage of a particular item of traffic is made the unit; and so Minnesota does not tax earnings that properly belong to neighboring States. For this reason it is difficult to understand how it can possibly be declared unconstitutional. The law confines itself to the taxation of commerce strictly within the boundaries of the State — a fact which is not the case in Maine.

How the tax on gross earnings is regarded in Minnesota has been well stated by Mr. S. G. Iverson, State Auditor, in an interview with the Ontario Commission. The reader will note especially what Mr. Iverson says of the distribution of taxes under the general property system.

Our people are especially well satisfied with the system of taxation on gross earnings, because they think it is the fairest way, all things considered. Under the *ad valorem* system, a railway runs through a certain county, it touches four townships in that county, there may be twenty townships, outside the four, which are contributing to the business of that road, perhaps even more than the four but for local purposes those twenty townships outside would not be represented in the assessment of that property and would get no revenue from it. There are counties in this State which have not a foot of railroad, but they are contributing just the same to the business of the road. Then, if the road is assessed under the *ad valorem* system, there is an eternal turmoil, the township assessor gets a crack at it, the county board has to be right, and it is the business of the railway company to see that they are friendly. Then it comes to the State Board, and of course

the railway companies will try to elect the man who will treat them most leniently. This all makes trouble for the public and for the railroads. Now under the gross earnings system we collected two million dollars last year with little expense or trouble either to the State or the railroads. And every dollar of taxable property in this state is benefitted to that extent, whether a county or a township has a railroad or not, the amount paid in to the Treasury relieves all the properties of the State. We have here a large through business, because of our peculiar situation; we have great lines like the Sault line running up into new country, the Northern Pacific, the Northwestern, the Milwaukee, running through the State, and we get a great amount of business.²²⁴

In Maine the tax on gross receipts differs fundamentally from that in Minnesota. In the first place it is graduated, and is in the nature of "an excise tax" based on the average receipts per mile. It is supplemented by a local tax on buildings.²²⁵ The law defines the "gross earnings" within the State of a railroad operating both within and without the State as that proportion of the entire earnings which the mileage in the State is of the total mileage. As a method of determining gross receipts on interstate commerce this is a simpler plan than the one in Minnesota. The Maine plan, however, is by no means equitable and might very justly be held unconstitutional, since it taxes earnings properly belonging in another State. How the Maine plan operates in comparison with the Minnesota plan is well stated by the California Tax Commission in these words:

The difference between the two methods may be simply, although very crudely, illustrated by an imaginary railroad traversing two states only. In one State, which we will call A, the road does a large local traffic of, say, \$10,000,000 per annum; in the other state, B, it has a small local traffic, say \$2,000,000 per annum. The interstate traffic, we will assume, for the sake of simplicity, runs mainly to and from a metropolis on the extreme border of A clear across A and B to and from a city on the farther boundary of B. The mileage in A is 500, in B is 400. The total through traffic is

\$15,000,000. By the Maine plan, State A would tax five ninths of \$27,000,000, or \$15,000,000. By the Minnesota plan it would tax \$10,000,000, the intra-state traffic, plus five ninths of \$15,000,000, or about \$8,333,000, in all \$18,333,000. That is, in the one case State A would be giving its neighbor B a share, as it were, in the revenues derived from its own large local traffic. In the other case it would be keeping all this for itself. The United States courts, being interested in the protection of *interstate commerce* only, would not interfere in either case, although if State B in our illustration undertook to apply the Maine method it would obviously be taxing property or earnings outside of its boundaries. If both states applied the same method, obviously no objectionable double taxation would arise. But if State A applied the Minnesota method and State B the Maine method, the railroad would have ground for objections, as being doubly taxed on a large part of its earnings. Clearly, the most equitable system, if universally applied, is the Minnesota system. It does not undertake to get taxes or traffic outside its own bounds.²²⁶

The gross receipts system in Maryland and Vermont needs no special comment. That in Vermont has already been explained. In Maryland the taxable gross earnings are defined practically the same as in Maine. The average earnings per mile of the entire system is multiplied by the number of miles in the State, and is, therefore, subject to the same criticism as the Maine law. The rate is graduated, being eight-tenths per cent on the first \$1,000 per mile; and one and one-half per cent on earnings between \$1,000 and \$2,000 per mile; and two per cent on all earnings over \$2,000 per mile.²²⁷ In addition to the tax on earnings there is a local tax on real estate, road bed, etc., which amounts to nearly two hundred dollars per mile. In Vermont the local tax is confined to non-operative property the same as in Minnesota.

In addition to the four States that use a tax on gross earnings as the principal method of obtaining revenue from railway corporations, at least five more use it as a supple-

mentary tax — New York, Pennsylvania, Ohio, Virginia, and Texas. In Illinois it appears that the Illinois Central road has paid the high rate of seven per cent on gross earnings since 1857. New York collects taxes from railroads by all the methods outlined in Table XXXV. Professor C. J. Bullock of Harvard refers to New York as possessing "the most complicated and clumsy methods known for taxing corporations". The rate in New York is five per cent on interstate gross earnings. In Pennsylvania conditions are practically as complicated, since that Commonwealth levies taxes on corporations by almost every method known to the science of finance. The stock and bond tax predominates, but in addition there is a levy of eight mills on business within the State. Ohio has an "excise tax" on gross earnings to supplement the old property tax. The property tax as already noted is assessed in each county on a particular road by a board composed of the auditors of the counties through which said road operates. It would be difficult, perhaps impossible, to devise a more clumsy method than this. Texas has a tax of one per cent on passenger traffic within the State. In Virginia a supplementary gross receipts tax has been established by recent legislation.

It should not be forgotten, however, even in a brief analysis of gross receipts taxation that at least three States have abandoned such a tax. The reasons why Iowa abandoned it in 1872 after ten years experience have been outlined in previous chapters. Michigan and Wisconsin have also introduced the ad valorem tax after many years of experience with the gross receipts system. In Wisconsin the law taxing railroads on their gross earnings was passed in 1854 and was not repealed until 1903. The motives which led to the adoption of ad valorem taxation in Michigan and Wisconsin after a number of heated political campaigns in each case seem to have puzzled the Ontario and California tax commissions.²²⁸ In fact both commissions appear to un-

derestimate what Michigan and Wisconsin have accomplished in the way of real reform along this line, and perhaps overestimate the merits of the Minnesota law. For example, the California Commission says:

There are, moreover, certain distinct objections to the attempt to tax railroad or corporate property in general in the same way and by the same standard as other property. In the first place, consideration must of necessity be given to the fact that railroad property is not local in its character, as individual property usually is. Railroad property extends through many municipalities and even serves communities through which it does not run. It cannot be equitably taxed in any one place or series of places.²²⁹

What the Commission says is true, but it has absolutely no application to the real administration of the Michigan and Wisconsin laws. These criticisms would apply to conditions in Iowa, Illinois, or Indiana, but not to Michigan or Wisconsin.

The views of the Ontario Tax Commission are also more or less indicative of prejudice. Their report on railway taxation submitted in 1905 is certainly exhaustive and gives considerable space to the Michigan and Wisconsin systems; but after a detailed statement of the Michigan experience, the Commission concludes, by saying:

Obviously, however, such a system has the fatal defect of making it impossible either for the railroads or the general public to distinguish between the most accurate and conscientious valuation, and mere ignorant guess-work or quite prejudiced and even dishonest returns.²³⁰

Again the same commission, speaking of the Wisconsin system, furnishes us with the following inspired statement:

Here, as in the case of Michigan, the whole onus of solving these difficulties and of getting at the valuation of railroads for purposes of taxation rests upon the members of the Tax Commission. As it is in the end simply a matter of their judgment, there is no common basis of reference by which either the railroads or

the public can determine whether or not the valuation is a fair one.²³¹

Manifestly if a system is "mere ignorant guess-work" or is "simply a matter of their [Tax Commission's] judgment", it has little to recommend it. But let us subject these broad generalizations to analysis. What do they mean? As a matter of fact they do not have any meaning. It should be noted that, in Wisconsin, the principal elements used in ascertaining the value of railroad property are: (1) cost of road and equipment; (2) par value of capital stock and funded debt; (3) market value of capital stock and funded debt; (4) franchises; (5) gross earnings; and (6) net earnings.²³²

The reader is asked to judge for himself whether a valuation based on the above elements and made by an efficient tax commission is "mere guess-work". In Minnesota the tax is based on gross earnings alone. It is the duty of each company to make annual or semi-annual reports to the State Railroad and Warehouse Commission. The State Auditor makes drafts on the companies and places the same in the hands of the State Treasurer for collection. It is difficult to imagine a more simple and efficient system, and it has much, in fact very much, to recommend it. One virtue which should not be overlooked is that it makes much less work for the tax commission than does the Wisconsin system. It requires only a few more or less mechanical operations. The elaborate tabulations made by the Wisconsin Tax Commission in its efforts to ascertain the true value of railroad property are not necessary in Minnesota. In fact the administration of the gross earnings tax in the latter State has in recent years been largely a matter of addition. Yet it has been fairly satisfactory to the railroads, and has yielded enormous revenue to the State.

But to affirm that the Minnesota system, from the standpoint of equity in taxation, is any less "guess-work" than

the system in Wisconsin or Michigan is mere nonsense. Why should a system based on a dozen important items be less reliable than a method of taxation based on the single item of gross earnings? Let us consider for a moment the real point at issue. The writer has been personally familiar with the work done by the Wisconsin State Tax Commission since that body was organized. It is composed and has always been composed of men of the highest ability and integrity. Since the passage of the ad valorem tax law the Commission has endeavored (1) to ascertain the true value of railroad property; (2) to ascertain the true value of the general property of the State; and (3) to levy upon railroad property the average general property tax rate of the State, the average rate being determined in the following manner according to law:

From the aggregate true cash value of the general property of the state and the aggregate of taxes so determined and entered on the records, the board shall compute and determine the average rate of taxation, state, county and local consolidated, by dividing the aggregate taxes by the aggregate true cash value of the general property of the state upon which said taxes were levied, which said rate so arrived at and determined shall be entered upon the records of the board and shall constitute the rate of taxation on the true cash value of the property of the railroad companies liable to taxation under this act.²³³

Before making comparison, let the conditions in Minnesota be noted. The preliminary report of the Minnesota Tax Commission discusses the inequalities of tax valuation in the various counties and lesser districts of the State.²³⁴ The Commission made a more exhaustive investigation along this line which has been submitted in their first biennial report.²³⁵ Enough, however, was done in their preliminary report to enable the Tax Commission to state that "such variation indicates a condition of assessment almost intolerable." In other words, there has been no serious at-

tempt to make a just equalization among the various counties of the State. The tax valuation may be forty per cent of the true value in one county, and ninety per cent in another. The Commission states that real property in the city of Stillwater is assessed at fifty per cent of its true value; seventy-eight per cent in Winona; and forty-three per cent in Duluth.

The conclusions reached in this investigation were more than substantiated in their regular report. After speaking of inequalities between districts, between rural and city property, between land and improvements, between improved and wild lands, and finally between individual parcels of land, the Commission thus concludes:

The average percentages for the cities show a variation in assessment that is almost intolerable, but the conditions back of the city averages indicate variations between wards and behind the wards figures that tell a story of gross injustice as between individuals.²⁸⁶

It is mild to say that such conditions are "almost intolerable"; and yet the California Commission has recommended the Minnesota plan of taxing railroads. The principal reasons they advance for so doing are its simplicity of administration, efficiency, elasticity, and uniform effect on business conditions. It may be said that these points are well taken. A tax on gross earnings is certainly a simple and efficient means of obtaining a large amount of revenue from railroads — at least so long as they do not object too seriously. The experience of Minnesota during the past three years affords conclusive proof of this statement. But is this the only index of a revenue system? What is desired is substantial equality of taxation; and to insure this it is often necessary to use different methods of assessment. But this diversity of assessment is for the purpose of obtaining if possible a more equitable distribution of the tax burden. The question is, does the Minnesota plan secure

such an equitable distribution? Is it more or less a guarantee of equity than the Wisconsin system? Which plan in other words possesses the largest element of what may be styled "guess-work"?

The most effective reply to these questions can be found in the regular report of the same Commission where an effort is made to compare the fiscal burden of railroads with the average taxes paid by individuals. To those tax commissioners and economists who are unduly impressed with the simplicity and revenue producing quality of gross receipts taxation the following statement is significant:

The information necessary for the comparison has been arranged in four tables.

1. Mileage and proportional capitalization of roads in Minnesota.
2. Reproduction and present value of the railroads as made by the companies themselves.
3. The State's reproduction and present values.
4. Taxation of railroads on gross earnings and ad valorem bases.

As a result of the investigation thus made the Commission reached the conclusion that "for the year ending December 31, 1907, the railroads scheduled in the table paid \$3,509,546.97 into the treasury of the state as their contribution in the form of taxes. Upon the basis of an assessment made according to the general property tax law and the average assessment prevailing in the state, these railroads would have paid, using the figures returned by the railroads as the cost of reproduction, the sum of \$5,339,975.41."²³⁷ In other words, when the great problem of equality and uniformity of taxation is approached under the gross receipts system of Minnesota, it is apparent that all comparisons must actually be made on the basis of the alleged "guess-work" of the Wisconsin Commission operating under an ad valorem system.

It must, therefore, be obvious even from a study of the Minnesota system that in order to obtain an equitable system of taxation it is necessary to ascertain three things: (1) the true value of all the railroad property in the State; (2) the true value of the real and personal property in the State; and (3) the average rate of taxation based on such real and personal property, which rate can thus be levied on the railroad property. It is not possible to obtain this data with absolute accuracy; and so relative justice is all we can hope for in the field of taxation. The Wisconsin Tax Commission after a great amount of careful labor can give with reasonable approach to accuracy the true value of railroad property, real and personal property, and the aggregate rate levied on the same. In fact the Wisconsin Commission could give this data with more accuracy than any other Commission in the United States — a fact which will be quite generally admitted by authorities on taxation. In Minnesota, no data existed along this line prior to 1908, and therefore the Commission had no knowledge of the true value of real and personal property, a fact admitted in its *Preliminary Report for 1907*. In the second place, no one in Minnesota had any definite knowledge of the true value of railroad property. Under such conditions how is it possible to know whether or not railroad property is being taxed higher or lower than the average rate levied on the general property of the State? Manifestly it is impossible to make any such comparisons for the simple reason that the necessary data is entirely wanting.

The fact is that in Minnesota and in a large number of States railroad property is isolated and taxed without reference to the true value of the other property in such States. The writer is aware that this plan has much to commend it. Some authorities maintain that railroad property should not only be assessed but taxed differently than ordinary real and personal property. In other words, it is

claimed that railroad property may justly be taxed higher or lower than other property, depending on conditions. Be this as it may, the people at large and many leading tax authorities (for example, Dr. H. C. Adams) hold a different view. They concede the necessity of elaborate classifications of property for purposes of assessment. This, however, is considered merely as a means to an end, that is, the equitable distribution of the tax burdens. Dr. H. C. Adams has demonstrated again and again that some form of ad valorem tax on railroads exists in practically all of the States and Territories. Commenting on this point, he writes:

So far as methods of assessment and collection are concerned, it is true that railroad corporations are placed in a class by themselves, but it is not true, speaking generally, that the theory of public contributions applied to them differs from the theory which is applied to other classes of property. That system of taxation, known as the general property tax, is as strong to-day as it ever was in the history of our country; indeed it is stronger, if we are to judge from the changes that have taken place in the laws of the States during the past twelve years.²³⁸

If this analysis of the phrase "equal taxation" is correct, then any system which taxes railroads without reference to the true value of other property, whether such tax is levied on the basis of gross receipts, net receipts, stocks and bonds, or the number of flat cars used, has no chance of being anything better than more or less refined "guess-work". In other words, railroads and other corporations may and should be isolated for purposes of assessment; but they can not be so isolated for purposes of taxation, if we are to secure a really scientific fiscal program. In Wisconsin and Michigan an earnest effort has been made to establish such a program. That their work has not produced a perfect system is certain, but that many flagrant abuses have been removed is a matter of well-known history. The

abuses due to undervaluation, now recognized by the Tax Commission of Minnesota, also exist in Wisconsin, but those abuses are being gradually removed in the latter State by the efficient administration of wise laws.

It has seemed necessary to weigh with some care the adverse judgment placed upon the ad valorem system by the California and Ontario commissions. In doing this, however, the writer does not presume to pass judgment on the relative merits of the gross earnings and ad valorem tax. Both methods are worthy of careful study and neither should be passed over in a mere perfunctory manner. The particular plan that should be adopted depends in a large measure on actual conditions. Both systems are entitled to a hearing on the part of States desiring to change their tax laws. The Minnesota plan is simple, elastic, and efficient from the revenue standpoint. The Wisconsin plan requires much more effort to administer, but in the hands of efficient men may doubtless render possible a more scientific revenue system.

If any State desires to institute a program of railway tax reform at least three plans stand out as possible models: (1) the gross earnings tax of Minnesota; (2) the ad valorem tax of Wisconsin; and (3) the stock and bond tax of Connecticut.²⁸⁹ The Connecticut method of taxing stocks and bonds has obvious and fatal defects — at least for western States. Nor has it been seriously considered by recent tax commissions. If a State has an ordinary central board of equalization composed of State officers, and, therefore an ex officio body, the Minnesota plan is preferable for purely administrative reasons. If a State has an elective tax commission, paid moderate salaries, with little practical and no scientific knowledge of tax problems, the Minnesota plan is again desirable for the same reason. On the contrary, a State that plans on establishing a non-partisan commission of highly paid efficient men with a fair appropriation for ex-

pert assistants, should study with much care the Michigan and Wisconsin plans — especially the latter. The *ad valorem* tax possesses positive advantages which should not be overlooked. It is in strict conformity with the views of the American people. Its constitutionality, if the law is carefully drawn, can not be questioned. Then, too, under this plan a revenue system which may embrace fifty different methods of assessment, can still be judged as a unit from the standpoint of equity in taxation.

Concerning the point of constitutionality, however, it should be stated that too much has been made of the possible unconstitutionality of gross receipts taxation. The Ontario Commission says that "in the United States, however, owing to the wording and interpretation of the Constitution, it is held by the courts that taxation by any State of the earnings of a railroad derived from interstate traffic, is illegal. . . . In several States where the gross earnings tax is accepted by both the people and the railways, it is thought that the law is not really constitutional, but as neither party cares to bring the matter to a test, it is permitted to stand."²⁴⁰ This statement is extreme and has done much to produce prejudice against the gross earnings tax. The Minnesota law has been in force for over thirty years; and when the Wisconsin law was repealed, it had been in operation for nearly half a century.

In the State of Minnesota not one dollar of railroad tax is levied on commerce outside the State. An article of interstate commerce must pass the boundary before a penny of State tax is levied upon it. Other considerations may logically prevent the State from adopting the Minnesota plan; but the fear of unconstitutionality should not be made a serious objection. The plan should be studied on its real merits, and on this basis it is worthy of thoughtful investigation.

Three problems remain to be considered: the distribution

of railway taxes; separation of revenue sources and tax administration; and a comparative statistical study of railroad taxes in various States.

The problem of railway tax distribution in Iowa has been critically examined. The question is, how far do conditions prevailing in Iowa hold true for the Union? The general problem of the unjust distribution of taxes levied on railroad, telegraph, telephone, express, sleeping car, and other similar corporations has been noted by the International Tax Association. It is of vital importance to study this problem if a system of taxation that is equitable is desired. In Iowa, the conditions from the standpoint of distribution have already been examined in detail. Conditions essentially the same prevail in the majority of the fifty States and Territories. This does not refer to the injustice meted out to our cities under the Iowa definition of "unit rule". Many States (like Nebraska, South Dakota, Illinois, and Georgia) that have a general property tax quite similar to Iowa so far as country districts are concerned, accord to cities the obvious right of taxing terminals. But the same undesirable condition prevails, whereby the majority of townships pay the taxes and in especially favored cases give an additional bonus to the minority. The fact that such a form of inequality prevails in the majority of our States shows the chaotic and unsatisfactory basis of our revenue systems. It is the desire of the International Tax Association to remove some of these inequalities.

One program advocated and practiced to a limited extent within recent years is that of segregation or the separation of revenue sources. This plan was first given a complete statement by Dr. H. C. Adams. The general idea is that the revenue from certain corporations like railroads, sleeping cars, telegraph, express companies, etc., should go to the State for State purposes, and the revenue from general property to the localities. Dr. Adams, speaking of rail-

way taxation says that "the earnings of the railways accrue on the general business furnished by the State; their payment for the support of the government, therefore, should be to the State and not to the localities".²⁴¹ A great deal has been made of this idea by recent tax commissioners. In some cases it has doubtless been pushed too far. For example, the California Commission declares that "the separation of State from local taxation as to sources of revenue has come to be generally recognized as the one feasible pathway for tax reform". Again, the statement is made that "separation will give the counties substantial home rule in matters concerning their own taxation", and that "separation would at once abolish all the evils which 'equalization' is intended to prevent, but which it unfortunately fails to remedy."

One more quotation is particularly inspiring: "Complete separation will abolish at once the expense, friction, and annoyance of the vain attempt to equalize between the different counties. Partial separation will lessen this evil, because as the proportion of State taxes to the total tax burden on each citizen is reduced the inducement to undervaluation is reduced in like proportion."²⁴² The Missouri Tax Commission has made practically the same statements and for the same reasons. No less an authority than Professor Seligman has again and again emphasized the importance of the principle of the separation of revenue sources.

Constitutional amendments have been submitted in the States of California and Missouri for the avowed purpose of establishing a separation of revenue sources. The following is a part of the amendment voted on in California, November 3rd, 1908, and rejected by the people:

Taxes levied, assessed and collected as hereinafter provided upon railroads, including street railways, whether operated in one or more counties; sleeping car, dining car, drawing-room car and

palace car companies, refrigerator, oil, stock, fruit, and other car-loading and other car companies operating upon railroads in this State; every company doing express business on any railroad, steamboat, vessel or stage line in this State; telegraph companies, telephone companies; companies engaged in the transmission or sale of gas or electricity; insurance companies, banks, banking associations, savings and loan societies, and trust companies; and taxes upon all franchises of every kind and nature, shall be entirely and exclusively for State purposes, and shall be levied, assessed and collected in the manner hereinafter provided. The word 'companies' as used in this section shall include persons, partnerships, joint-stock associations, companies, and corporations. All property, not exempt from taxation, except those classes of property enumerated in this section, shall be subject to assessment and taxation, in the manner provided by law, for county, city, town, township, and district purposes. Provided, that until the year 1914 the State shall reimburse San Bernardino, Placer, and Yuba counties for the net loss in county revenues occasioned by the withdrawal of railroad property from county taxation.²⁴³

The vote on the amendment in Missouri taken on November 3rd, 1908, was against the advocates of separation. The amendment reads as follows:

1. The general assembly shall separate the sources of state and local (that is, county, school and municipal) revenue and establish local option for the counties and municipalities of the state in the selection of the subject of taxation.
2. The separation of the sources of state and local revenues, and the establishment of local option and home rule in taxation, shall be effected by the discontinuance of the levy of a general property tax upon the real and personal property of the state by the general assembly from and after the first day of January, 1909, and the revenue required for all state purposes shall thereafter be secured either by the exercise by the general assembly of its power of taxation upon the subjects of taxation other than by the general property tax upon the real and personal property of the state, or by apportionment to the counties of the state and the city of St. Louis, of so much of the revenues required for

State purposes as may be in excess of the revenue of the state derived from other sources of revenue, such apportionment to be made by the state board of equalization in the manner provided by the general assembly.

3. Upon the discontinuance of the levy by the general assembly of the general property tax for state purposes upon the real and personal property of the state, that is to say, after Jan. 1, 1909, the counties and cities of the state may subject to taxation for local purposes the real and personal property within their jurisdiction, and may exempt any class of property within such jurisdiction from taxation, either wholly or by reduction of the rate of taxation thereon; Provided, that any taxation or exemption from taxation made in any county or city shall be uniform upon the same class of subjects within such territory. The taxation for school purposes within such county or city, by whatever authority levied, shall be made according to the plan of taxation adopted in the county wherein such school district is located, or in the city, if the district is located wholly in an incorporated city.²⁴⁴

Thus it is seen that in two great States there has been a deliberate effort through the enactment of constitutional law to reform the revenue systems by means of the separation of revenue sources. It is only necessary to state at this time that the California and Missouri commissions have placed too much stress on mere separation as such, and in doing so have overlooked the far more important problem of an efficient centralized tax administration. New York, Pennsylvania, Connecticut, Ohio, and Minnesota, have been cited as examples of the principle of separation of revenue sources — there is as good or even better reason for naming Wisconsin and New Jersey. None of these States have consciously developed a complete program of segregation. Even in Wisconsin where no State tax has been levied on general property for several years, the idea of the conscious separation of revenue sources has received little or no thought. In New York, Pennsylvania, and Ohio, the local units obtain a large revenue from railway corporations — a condition of

affairs which California and Missouri are striving to prevent through segregation. It seems to the writer that many authorities fail to recognize one of the main objects of the principle under consideration. The principle of segregation is advocated not mainly for the purpose of securing any particular sources of revenue. In a few cases this has resulted, but it has been incidental to the main purpose, which is, first, a more efficient tax administration, and second, what logically follows, more equitable taxation by avoiding the unjust distribution outlined in these pages. In other words, separation of revenue sources so far as it is a wise principle means and ought to mean more centralization in the revenue systems of the American Commonwealths.

In conclusion attention is called to Table XXXVI, taken from the *Nineteenth Annual Report of the Interstate Commerce Commission, Statistics of Railways*.

TABLE XXXVI²⁴⁵

SUMMARY SHOWING TAXES AND ASSESSMENTS OF THE RAILWAYS IN
THE UNITED STATES, BY STATES AND TERRITORIES,
FOR THE YEAR ENDING JUNE 30, 1906

STATE OR TERRITORY	AMOUNT	PER MILE OF LINE
Alabama	\$ 863,635	\$ 190
Arkansas	909,916	224
California	1,962,675	325
Colorado	1,421,536	295
Connecticut	1,241,680	1,220
Delaware	103,763	310
Florida	583,738	170
Georgia	973,759	158
Idaho	379,488	244
Illinois	5,364,330	453
Indiana	3,225,391	451
Iowa	2,146,279	217
Kansas	2,710,285	305
Kentucky	1,096,530	333
Louisiana	883,220	241
Maine	513,324	262
Maryland	842,230	597

STATE OR TERRITORY	AMOUNT	PER MILE OF LINE
Massachusetts	3,505,312	1,683
Michigan	4,584,723	554
Minnesota	3,074,306	389
Mississippi	702,073	197
Missouri	1,642,600	209
Montana	784,785	240
Nebraska	1,389,174	240
Nevada	312,033	235
New Hampshire	411,101	333
New Jersey	2,323,232	1,047
New York	5,540,836	671
North Carolina	685,914	176
North Dakota	991,307	264
Ohio	4,686,549	519
Oregon	357,731	211
Pennsylvania	6,982,973	645
Rhode Island	235,013	1,128
South Carolina	528,359	167
South Dakota	338,003	107
Tennessee	920,766	263
Texas	1,417,765	118
Utah	549,395	313
Vermont	170,230	161
Virginia	1,276,957	334
Washington	1,164,352	354
West Virginia	622,736	214
Wisconsin	2,707,201	337
Wyoming	205,445	165
Arizona	232,563	130
District of Columbia	42,473	1,459
Indian Territory	34,638	13
New Mexico	369,565	147
Oklahoma	591,292	212
Total	\$74,602,171	\$349

This table shows the total amount of taxes paid by the railroads and the amount paid per mile in the fifty States and Territories.²⁴⁶ In the total amount paid Pennsylvania ranks first, New York second, Illinois third, and Ohio fourth. When we consider the rate paid per mile, Massachusetts ranks first with \$1,683 per mile, District of Columbia second, Connecticut third, and New Jersey fourth. Thir-

teen States and Territories collect from railroads less than two hundred dollars per mile. When carefully studied this table is a good index of the industrial development of the various States.

A more interesting point brought out by the statistics under consideration is the striking contrast between Iowa and some of her neighboring States. The rate of tax per mile in Iowa is \$217; in Illinois, \$453; in Kansas, \$305; in Indiana, \$451; in Michigan, \$554; in Minnesota, \$389; in Nebraska, \$240; in Missouri, \$209; and in Wisconsin, \$387. Thus the rate in Iowa is seen to be very low in comparison with most of the neighboring States.

In the case of Minnesota the *Report of the Railway and Warehouse Commission of 1907* and the *Preliminary Tax Commission Report* furnish more complete data for comparative study. The total number of miles of railroads in Minnesota on June 30, 1906, was 7,937.12; and the total gross earnings for the same year was \$81,619,640, and the taxes paid \$3,270,336.63.²⁴⁷

The statistics for Wisconsin should also be carefully noted in this connection. A letter from Mr. George Curtiss, Jr., Secretary of the Tax Commission, gives the mileage, earnings and assessment of Wisconsin railroads for 1907. The miles of line operated were 7,426.19 (excluding 2nd and 3rd and 4th tracks, spurs, and sidings), gross earnings \$60,244,261, total valuation \$255,850,000, and total tax \$2,801,685. The writer would not presume to pass judgment as to the full meaning of this comparative study. Good reasons may exist for the comparatively low gross earnings in Iowa. But when Minnesota and Wisconsin receive nearly double the amount of railroad tax per mile as Iowa, the problem is certainly one that merits careful study. The facts presented in these pages suggest that the taxation of railroads (and the same is true of other corporations) in Iowa affords a proper field for scientific investigation.

PART IV
GENERAL CONCLUSIONS

XXIV

HISTORICAL ANALYSIS OF THE IOWA REVENUE SYSTEM

INTRODUCTION

It will be generally conceded that an historical analysis of any subject, the narrative of which has been presented in detail, should be more than a mere statement of the leading facts. A repetition, moreover, of the more important facts without an interpretation of the same, made from the standpoint of underlying principles, would be largely superfluous. In a word, an historical analysis should present a new and more complete view of the whole problem under consideration. It is one thing to break up and dismember a part or the whole of our social organism: it is another and frequently more important work to re-shape and re-define that organism. If the whole can be understood only by a careful study of all its parts — an axiom of present day research — it must also be conceded that modern industrial society can not be accurately judged on the installment plan. The attempt to do this invariably results in ill-advised reforms and misguided statesmanship. Analysis should be scholarly and scientific; but it must be supplemented by synthesis if a constructive program of legislative or administrative reform is to be formulated. One without the other is at best only the presentation of a half truth.

The critical reader has doubtless been impressed again and again with the fact that fiscal reform movements in Iowa have, for the most part, been superficial and fragmentary. Frequently the result of local or class selfishness, they have not been based on thorough historical analysis

and patient scientific synthesis of the whole tax problem. It is impossible for the busy, practical legislator to do this, however good his intentions; and it means too much labor for the mere propagandist. The result is that one reformer, or rather opportunist, becomes impressed with a certain phase of a tax question and immediately urges a made-to-order solution of the whole problem. Other reformers do likewise. When all possible solutions are on file, some shrewd third party is generally able to manipulate conflicting forces so that nothing at all is accomplished, or at least the real purpose of proposed legislation is defeated.

There is but one remedy for this condition: namely, to supplement the study in detail with a careful synthesis of the whole problem based upon an historical analysis of the Iowa revenue system. This has not been done in the past; and largely for that reason, ill-advised measures have too often taken the place of a rational program of sane, well balanced reform.

The reasons for quoting extensively from documentary and other material, both in the body of the text and in the *Notes and References* were stated at the outset. Briefly, this method has been followed, first, to enable the reader, by a careful examination of the original material, to form an independent judgment concerning the merits of proposed reforms; and second, to make it possible for the writer, without even the appearance of dogmatism, to discuss candidly the facts of history, the principles of legislation and administration, and the nature of certain reforms.²⁴⁸

THE GENERAL PROPERTY TAX

Among the leading fiscal problems which have been examined historically and critically in the course of the foregoing narrative, by far the most important is the general property tax itself. Borrowed from an earlier jurisdiction, established by legislation in 1838, and continuing to the

present time, the general property tax has always formed the very heart of our revenue system. This being true, it is manifestly necessary to understand this tax thoroughly before one can think clearly or judge fairly concerning the nature and scope of other revenue problems.

Any study of the general property tax should be made from two leading standpoints: first, the underlying principles, or the theory of public contributions upon which it rests should be interpreted; and second, the fiscal machinery for assessment, levy, and collection should be examined. Unless this distinction is carefully made, no discussion of the general property tax can be regarded as scientific and trustworthy. It has become the fashion in recent years to condemn and denounce this tax indiscriminately. Some leading economists and tax commissioners have vied with each other in their efforts along this line. While much that has been said is true, a great deal of error has also been revealed because writers have failed to make the simple and obvious distinction between mere forms of administration on the one hand and underlying principles of taxation on the other. Had this distinction always been made, many pages of fiscal erudition would be more a statement of actual realities and, therefore, less a mere jumble of words.

Chapter IV of Volume I of this work has been entitled *The Administrative Failure of the General Property Tax*. This title, however, should not be taken to imply that the theory of public contributions upon which this tax is based is wrong and that a radical change of the whole system should be made for that reason. The history of the general property tax since 1872 has been a failure chiefly from the standpoint of administration. The inheritance tax of Iowa is also far from a real success, largely for the same reason. With the proper kind of revenue machinery in the various counties of the State, the collection of the inheritance tax would doubtless be greatly simplified and therefore ren-

dered more efficient. The fact is that no plan of taxation can succeed with a lax, disjointed system of administration. The general property tax of the American States and cities is no better and no worse than the administrative machinery and efficiency with which the same is assessed, levied, and collected. So long as people attempt to create a revenue system by the mere enactment of laws the general property tax and all other forms of taxation are sure to be more or less of a failure in practice. What is needed in Iowa and in other States is not more theories — some economists would have a separate theory for practically every form of property or business — but more efficient administration. Two points should, therefore, be carefully considered: first, the machinery of levy, assessment, and collection; and second, the underlying principles of contribution upon which the general property tax is based.

The machinery of levy, assessment, and collection created by the first Legislative Assembly may be briefly described. Under the law then enacted the levy was made by the board of county commissioners, the assessment by a county assessor elected annually, and the collection by the county sheriff who was required to pay the same over to the county treasurer. Corrections in the assessment roll were made by the county assessor and clerk of the board of county commissioners at a regular meeting held on the last Monday in June. Further than this no provision was made for equalization. Five per cent of the gross amount of taxes levied in the counties was set apart by the board of county commissioners as revenue for the Territory.

Provision was made in 1840 for the appointment of a deputy assessor, when deemed necessary, and such appointment was to be approved by the board of county commissioners.²⁴⁹ Otherwise the fiscal machinery was not materially changed. In 1841 the board of county commissioners was required to levy an additional quarter of a mill tax

for Territorial purposes, which was to be in lieu of the five per cent of gross taxes levied in the counties as provided in the act of 1839. The principle thus incorporated of levying a regular Territorial or State millage tax on property has continued to the present day; and, in fact, this would seem to be the only equitable method of apportionment in any State where a separation of revenue sources has not been completely realized.

In the *Revised Statutes* of 1842-1843 and by the provisions of an act approved on February 15, 1844, fundamental changes were made in the system. Township or precinct assessment was established. Local assessors were required to file the original assessment list with the clerk of the board of county commissioners, and also give legal notice so that all persons not satisfied might appear before said board. The levy was still made by the board of county commissioners, which was also required to examine carefully the several assessment rolls; but the collection of taxes was placed in the hands of the county treasurer or his deputy. The act meant a substantial increase of fiscal authority for the township; but it should be noted that the board of county commissioners when examining and correcting the assessment rolls might reduce an individual assessment, a privilege which is not at present granted to the county board of supervisors. The balance of fiscal authority between the county and the township revealed in these acts should be clearly understood as having an important and a vital bearing upon the problem of present day tax reform.²⁵⁰

In 1845 county assessment was reintroduced, the powers of the board of county commissioners remaining the same as before — as also those of the county treasurer, save that he was given authority to impose the regular tax rate on property omitted by the county assessor. From the all important standpoint of assessment this act meant that the

county had completely regained its former power. In 1847 the sheriff was made ex officio assessor for his county and the recorder ex officio treasurer. Otherwise the machinery of assessment, levy, and collection remained the same.²⁵¹ The county system also prevailed under the *Code of 1851*, the sheriff being ex officio county assessor with power to appoint an assistant assessor. Important changes, however, were made in the fiscal machinery of the State. The levy of taxes, formerly made by the board of county commissioners, was now placed in the hands of the county court, and the correction of the assessment roll was given to a county board composed of the county judge, clerk and treasurer. Finally, a State board of equalization was created, the Census Board being given power to change any of the assessments or vary the rate of taxation in any of the counties, providing that the aggregate amount of valuation remained substantially the same.

The provision concerning the State board of equalization should be studied with much care in connection with similar provisions in later codes. It appears that by the *Code of 1851* the State board was given the important right to level up or level down "any of the assessments" in the various counties, on condition that they preserved unchanged as far as practicable "what would have been the aggregate amount of valuation had no such equalization been made."²⁵² In other words, nearly two generations ago our State board of equalization was given authority to change or equalize individual assessments but not the aggregate amount of valuation — which meant the possession, at least on paper, of some real power. With county levy, assessment, and collection — by the county treasurer or his deputy — with the correction of the assessment roll by a special county board, and with the important right to change any assessments vested in the State board of equalization the *Code of 1851* gave some promise of the early realization of an efficient revenue system.

The strength of the *Code of 1851*, however, was more nominal than real. The fact that the county court was given the power to levy the taxes — a situation which recalls the judicial administration of the present inheritance tax law — while a separate county board possessed the power of correcting the assessment roll indicates the absence of any scientific plan or definite purpose. Again the obvious fact that the Census Board, from the nature and scope of its other duties, could not exercise in practice the authority which it possessed, was destined to make the State board of equalization a perfunctory body — or to phrase it differently, a fiscal sham.

The *Code of 1851*, however, was an important turning point in our revenue history. It represented a period of unstable equilibrium; and when such equilibrium was destroyed, the shadow of power remained with the county or was transferred to the State while the real substance of fiscal authority was won by the advocates of the township system of local government — a fact which is primarily responsible for the administrative failure of the general property tax and also for the general disintegration and perfunctory character of the whole revenue system.

The first blow was soon struck against the delicately poised machinery of levy, assessment, and equalization created by the *Code of 1851*. The township system of assessment, or what is the same thing, fiscal decentralization, was temporarily reintroduced in 1853²⁵³ by a law which was extreme in character. It provided for annually elected township assessors, and further stipulated that such assessors should meet at the office of the county judge in April to classify the several descriptions of property and again in July to act as a county board of equalization. In a word, the whole work of assessment and equalization, save for the nominal functions of the Census Board, was in the hands of township officials. For the first and last time in the revenue

history of Iowa, the county was practically blotted from the fiscal map from the standpoint of assessment and equalization, the county board of equalization being in reality a township body, not a distinct and separate county organization. Passing from the *Code of 1851* to the law of 1853, we move in two short years from one extreme to the other. Manifestly the latter arrangement could not be permanent.

The pendulum of revenue administration swung in the opposite direction in 1857 when county assessment was once more established. The county assessor was now to be elected biennially; and when necessary he was to be assisted by one or more deputies, appointed by the county judge. The act of 1857 did not concern the levy and collection of taxes—the administration of that work remaining unchanged. It was essentially “An Act in relation to the assessment of property.”²⁵⁴ After the county assessor and his deputies had worked five months in completing the assessment roll—February 1st to July 1st—it was submitted to the county judge who in coöperation with the clerk, surveyor, assessor, and sheriff, constituted a board for the equalization of assessments. As the assessments referred to in the act were not based on the township as a unit, it appears that the county board, nominally at least, did possess some real power of equalization as between individuals. In practice, however, such power could not be exercised; and so, while nominally real, it was in reality nominal—that is, a mere statutory makeshift.

The act of 1857 is also noteworthy from the standpoint of the power vested in the Census Board. In this respect fundamental changes were made. The power to increase or decrease individual assessments is not directly granted; nor is it believed that such power can be fairly assumed. The Census Board might add to or subtract from the aggregate valuation of a county, or it might increase or decrease the valuation of a town when the demands of justice so re-

quired. To call attention to the fact that under the *Code of 1851* practically the opposite was true, the Census Board having the power to change any rate or any assessments providing the aggregate valuation remained substantially the same, is to present a distinction of great value to the advocates of a program of constructive reform.

County assessment lasted but one year, the township system being permanently introduced in 1858. The law passed at that time was, therefore, a landmark in our revenue history. Under this act, the levy was made by the county board of equalization — composed of the county judge, surveyor, and treasurer — the collection by the county treasurer, and the assessment by township officials. County equalization meant the increase or decrease of the aggregate valuation of a township; but individuals might appear before the board and have their assessment corrected. The power of the Census Board remained the same as described above. It thus appears that under the act of 1858 the substance of power was lodged with township officials, the duties of county and State boards of equalization being in the main perfunctory. Nor should it be forgotten that an individual might still appeal to the county board.

In the *Revision of 1860* the machinery of levy, assessment, and equalization was finally shaped substantially as it operates to-day. In fiscal importance the township was again the gainer. The levy of taxes and the county equalization of assessments were made by the county board of supervisors — a body at that time composed of representatives elected in the civil townships. With assessment in the hands of township officials, this meant almost a complete victory for the advocates of fiscal decentralization. Levy, assessment, and county equalization were all vested in a body of men elected in the civil townships. The statutory provisions differed, however, from those of 1853 in that the county board of supervisors was constituted a body sepa-

rate and distinct from the local assessors, who were, therefore, not permitted to meet and equalize their own assessments. Two other facts should be noted by the student of administration: first, the county board of supervisors could hear appeals from individuals and equalize assessments between persons on the one hand and townships on the other; and second, the State board of equalization was definitely deprived of all power over assessment, save that of increasing or decreasing the aggregate valuation of a county. Only one or two additional steps were now required to make the fiscal authority of the township absolute—or in other words, to guarantee and emphasize the administrative failure of the general property tax.

While forms of property were daily multiplying and becoming more complex and corporations were growing with great rapidity, reformers, guided by prejudice rather than reason, were slowly but surely perfecting a plan of administrative decentralization which was destined in Iowa as in a majority of States to perpetuate a gross injustice, in fact a disgrace, to democratic institutions. If this judgment should be regarded as extreme, the attention of the reader is invited to the facts revealed in the chapters dealing with the statistical study and administrative failure of the general property tax.²⁵⁵ It will be recalled that the statistical study (Vol. I, Ch. V.) deals primarily with that period of our revenue history which follows the perfection of the township system above outlined. From the standpoint of the levy, assessment, and equalization of the general property tax the fifty years that have elapsed since the *Revision of 1860* have added but few verbal and practically no real changes to the revenue laws of the State. The slight modifications that have been made have tended to perfect the incapacity of the revenue machinery, thus making it more and more an anachronism.

The minor changes required to complete the inefficiency

of the system were not long in coming. In 1862 provision was made for the election of separate assessors in all the cities and incorporated towns of the State in addition to the one already elected in each civil township, which meant further administrative decentralization.²⁵⁶ Up to this time the collection of taxes had always been a county function, usually in the hands of the county treasurer or his deputy. In 1868 a law was passed giving the board of supervisors, in counties having a population of over four thousand inhabitants, the power by a two-thirds vote to authorize the election of township collectors in all civil townships save that in which the county seat was located.²⁵⁷ Although the proposed system was limited and required a two-thirds vote of the board of supervisors, the law nevertheless represented another step away from the county and, therefore, toward further decentralization. In a very real sense it may be alleged that the low water mark of revenue administration was reached in 1868. In passing this judgment we have in mind the fact that in 1870 two important laws were passed bearing upon the problem of administration: first, the personnel of the county board of supervisors, with its powers of levy and equalization, was changed from a mere organization of township representatives annually elected to a distinct county body of three members alternately chosen for terms of three years;²⁵⁸ and second, the township trustees were constituted as a local board of equalization with power to change individual assessments in the same manner that the newly organized county board could change the aggregate assessment of a township or the Census Board could alter the aggregate assessment of a county.²⁵⁹ It is significant and instructive to note that the Thirteenth General Assembly which made the county board of equalization a distinct county body also deprived it of the important power to change individual assessments — a privilege which was granted to the new township board of equalization.

With the latter act the victory of the township system was complete, both in legal forms and in economic realities. In assessment matters the State of Iowa had been moving backward since 1851. By 1870, whatever merit, even on paper, the machinery of assessment possessed in 1860 had been largely destroyed. With railroads and other corporations springing up on every hand, Iowa possessed a revenue system wholly incapable of adjusting itself to the needs of a great industrial society.

No sooner had the substance of power in the assessment and equalization of general property passed from the county to the township than another important change was agitated. Should railway corporations be assessed by local officials or by a State board? Since 1862 these corporations had paid a tax on their gross receipts. People were now demanding a change to the ad valorem basis. Some localities merely demanded local taxation, but the cities especially desired both local assessment and local taxation. No one understood the folly of local assessment as applied to railway corporations better than Judge Hubbard. The result was that by the act of 1872 the assessment of railroads, the greatest of all public service corporations, was placed in the hands of the State board of equalization.

The fiscal situation when the *Code of 1873* was enacted is thus apparent. Save for optional township collection,²⁰⁰ the levy and collection of taxes was distinctly a county function. Through a series of compromises, which had lasted more than a quarter of a century, the advocates of the county system retained this power. In doing so, however, the far more important, in fact the really essential privilege, was completely lost. Assessment became and was to remain a township function. The equalization of individual assessments — the only equalization that has any value even on paper — also became and was to remain a township, town, or city function. In other words, the real substance of

fiscal authority over the assessment of general property was vested in the local units of government, while the shadow remained with the county or was transferred to the State.²⁶¹

Optional township collection of taxes as established in 1868 and continued in the *Code of 1873* did not prove to be practicable or desirable. The county as a unit for collection was less cumbersome and therefore more efficient. With the biennial election of assessors introduced in 1880 and 1882 and the semi-annual payment of taxes in 1884 we are brought to the *Code of 1897*, and indeed to the revenue system of to-day. The administrative machinery now operative in Iowa for assessment and equalization and for the levy and collection of taxes may be summarized as follows:

First. Levy of taxes by the county boards of supervisors and collection by the county treasurer or his deputies — in other words, substantially the county system aside from purely local tax levies.

Second. Assessment by local assessors and equalization between individual property owners — the only equalization in Iowa which has even a nominal value — by town, township, or city boards of equalization. In a word, the whole work of assessment of general property, the very basis of the fiscal pyramid is in the hands of local officials, thus forming a thoroughly decentralized system.

Third. Perfunctory equalization of town, city, or township values considered in the aggregate by the county board of supervisors — a mere paper provision which never had and never will have any meaning from the standpoint of real fiscal administration.

Fourth. Perfunctory equalization of county values considered in the aggregate by the Executive Council — which is the best example in Iowa of the administrative folly of placing a great and important function in the hands of an *ex officio* body.

Fifth. Assessment of certain public service corporations

by the Executive Council — a task which can be wisely performed not by an ex officio board but by a permanent tax commission giving all its time to the work.²⁶²

In concluding this part of the historical analysis it may well be asked, should there be any surprise at the administrative failure of the general property tax? Was it probable or even possible for it to be otherwise? When the history of the great central question of assessment is calmly reviewed it is found to be characterized by hopeless decentralization, on the one hand, and the perfunctory labor of ex officio boards, on the other. The fact that the general property tax has been a failure and is rapidly becoming more so with the increasing complexity of our industrial life, may be attributed to the following causes: first, assessment by town, township, or city assessors; second, mere nominal equalization by ex officio boards; and third (a different way of stating the first two points), more than two generations of constant effort to create a revenue system by the enactment of law without the necessary help of efficient administration.

If it is true that the administrative failure of the general property tax has long since been an accomplished fact in Iowa, what shall be said concerning the underlying principles of contribution upon which the tax is based? Can the unfortunate conditions outlined in the narrative be explained entirely from the standpoint of faulty administration, or is the theory of the tax unsound and indefensible? Any comprehensive study of the revenue system must include an historical and critical survey of this problem. What are the fundamental principles of the general property tax?

The first act passed by the Legislative Assembly of the Territory of Iowa, in addition to poll and license taxes, merely provided for the levy of a tax on real and personal

property. The law on this point was brief and affords no detailed explanation of the terms real and personal property, aside from the fact that real estate was made to include improvements on land. In the year following an act was passed providing for the assessment of real estate "at the actual value,"²⁶³ without including the improvements thereon; but this proved to be only a temporary measure. By the provisions of a later act improvements were again included, and in fact have remained a permanent part of the value of real estate. The revenue measure enacted in 1841 clearly stipulated that the assessment should be made upon the value of land per acre, the value of town lots and of all other property subject to a tax for county purposes.²⁶⁴ In the law of 1844 there is the additional provision that money at interest and corporation stock are considered personal property and required to be taxed at their "true value". Two years later the term "cash value" was applied to the assessment of real and personal property, and it was further provided that, in measuring such value, assessors should consider the fertility and quality of the soil, water privileges, the vicinity to roads, towns, villages, navigable water, and in fact all other local advantages.²⁶⁵ It thus appears that during the Territorial period the value, true value, or cash value of real and personal property was considered a just and equitable basis of taxation. Moreover a rough method of estimating such value was outlined in the statutes.

Passing over slight changes made during the period from 1846 to 1850 there appears in the *Code of 1851* a more comprehensive statement of the underlying principles therein outlined which are as follows: assessment of real property at its true value in money at a private sale, having regard to its quality, locality, natural advantages, general improvements in the vicinity, and all other elements of value; depreciated bank notes and depreciated corporation stocks or

shares—a common form of property at that time—at their current value and rate; credits at what the person listing believed could be collected, annuities at their worth in money; and finally, the stock of goods of a merchant or manufacturer at the average value of such property in their possession during the year previous to the listing. A careful study of these principles reveals the fact that, when reduced to the last analysis, they are all included in the term value. The measure of ability to pay taxes outlined in the *Code of 1851* is the true value of real and personal property. The provisions of the Code are more comprehensive than earlier laws largely because they give a broader and more detailed definition of the term real and personal property. The theory of the general property tax remained the same.²⁶⁶

The *Revision of 1860* added almost nothing either to the definition of general property or to the theory of its assessment. One term, however, is worthy of passing notice, namely, that included in the provision that real property should be assessed at its “true cash value.”²⁶⁷ From the standpoint of verbal evolution rather than from any serious consideration of fiscal principles it is instructive to note how nearly a quarter of a century of revenue legislation produced the important change, first, from “value” to “true value” or worth in money, later to “cash value”, and finally to “true cash value” as a proper basis of assessment. No doubt these changes were brought about as the result of compromise—the traditional method of securing “practical legislation”.

After 1860 nothing essential was added to the fundamental principles of contribution upon which the general property tax is based. The verbal statement of the theory was reasonably complete; and law makers were, therefore, in a position to survey other fields. Reformers at once began to produce a new crop of “solutions” in the extensive

laboratory of fiscal legislation. In a word, the pendulum swung from a consideration of basic revenue principles, first, to a development of special methods of assessment (a series of fiscal experiments),²⁶⁸ and second, to a complete realization of the program of decentralization on the one hand and perfunctory equalization on the other. Thus we are finally led to the question, does the administrative failure of the general property tax, which became more and more an established fact in later decades, imply an inherent criticism of the general theory of the contribution of this tax which is so clearly outlined in the *Revision of 1860*?²⁶⁹

Nothing was added to the basic principles of general property taxation by the *Code of 1873*. In fact, no change was made until the enactment of the *Code of 1897*. It is instructive to note, however, that when the Revenue Commission in 1893 advanced their plan of the assessment of property at full value, the opposition was so strong that the bill was not even seriously considered by the General Assembly. The people at large and a number of leading papers seemed to think that something new was being foisted on the public. The *Iowa State Register*, for example, protested with more vehemence than logic in a number of editorials against what it styled the "tax eaters" revenue bill, which proposed assessment of real estate and personal property at full cash value. Perhaps the editor of that paper and the editors of other leading journals did not realize that the very thing they were condemning had been the law of the State for nearly two generations. From the very beginning of the Territorial period both the spirit and letter of our revenue laws had demanded taxation of property according to value. Different terms had been used, such as "value", "true value", "cash value", "true cash value", "current rate", and "actual worth in money" — indeed, almost any number of terms might be found by making a diligent examination of the session laws, revisions,

and codes. The meaning — that is the spirit of the law — was always the same. From 1838 to 1897 the plain requirement of the law was taxation on the basis of value, which could mean only one thing, namely, value in the market as determined by the ordinary course of trade.

When the Revenue Commission of 1893 proposed a few slight verbal changes in this ancient fiscal doctrine — changes which in practice would have proved harmless and would have left the general property tax as much of a failure as before from the standpoint of administration — people became alarmed and thought some novel scheme was being advanced. It was alleged again and again that no State attempted to assess property at its full value and that to do so in Iowa would be impracticable and unthinkable. The rejection of the Revenue Commission bill on this ground was an open and complete repudiation of our whole revenue history, which had always provided assessment at full value. The law had been evaded for so many years that its real nature and purpose had been entirely forgotten. Even to mention the enforcement of a measure which had been on our statute books for more than half a century was considered by the *Iowa State Register* as a calamity of the first magnitude.

The real climax, however, came with the enactment of the *Code of 1897*. At that time two courses of action were presented to the General Assembly: first, the problem of low and unequal assessments might be met honestly and squarely by the creation of adequate machinery of administration; or second, it might be ignored and possibly buried beneath an additional mass of legislation. The latter course proved to be the line of least resistance. Rather than meet the stern and difficult tasks of fiscal administration, our law-makers evaded the real issue by the enactment of what has rightly been called a statutory subterfuge.²⁷⁰ Those who framed the *Code of 1897*, however, were wise enough

to preserve the old time value principle at the basis of the general property tax. Provision was made that all property subject to taxation should be listed at its "actual value". The only change made was the requirement that assessment be made at twenty-five per cent of such actual value.

As a product of historical evolution the value principle was retained in the statute, the twenty-five per cent clause being merely a unique method of writing into law the administrative failure of the general property tax. To say the least, that provision of the *Code of 1897* is both striking and instructive which clearly and specifically retains the theory of property taxation, but in a form so modified as to admit and in fact emphasize the breakdown of financial administration! In this fact may be found much to suggest a desirable program of constructive reform.²⁷¹

THE TAXATION OF CORPORATIONS

Having examined the leading features of the general property tax, we are now in a position to discuss special problems in taxation and to trace and analyze the special methods of assessment which from time to time have been devised and perfected. In doing this the obvious distinction between changes in the basic principles of contribution and mere changes of fiscal administration should always be kept in mind. Otherwise clear thinking is impossible. The various special problems in taxation will accordingly be considered from the standpoint both of economic theory and actual administration.

When the *Revised Statutes* of 1842-1843 were enacted the property of bodies corporate did not form a separate class but was included in the general property tax. This meant assessment by local assessors on the basis of value.²⁷² In the *Code of 1851* it was provided that the property of certain corporations should be taxed through the shares

of the stockholders, special provision being made for non-resident owners of stock. This meant a change, not in fiscal administration, but rather in the method of determining the value of corporate property. Even this change was more nominal than real, as corporate stock had previously been included in general property.

The same provision regarding the taxation of the shares of stockholders in certain corporations was included in the law of 1858 with a more definite statement, however, as to the apportionment of the non-resident tax. It was therein stipulated that the county receiving the tax upon the property of non-resident stockholders should distribute and pay over the same to other counties in proportion to the improvements located in such counties.²⁷³ In the *Revision of 1860* and the *Code of 1873* there are simply plain statements requiring that the stock of corporations shall be assessed at its cash value.²⁷⁴ Two things should be especially noted with reference to the taxation of corporate stock up to 1873: first, that the law did not stipulate whether the real estate of such corporation should be separately taxed; and second, the real nature of corporate stock was not clearly defined. There is nothing in the *Code of 1851*, the *Revision of 1860*, or the *Code of 1873* to indicate whether corporate stock should be considered as credits. Nor was this a minor question in view of the fact that the holders of credits were permitted to deduct their just debts.

When the *Code of 1897* was enacted provision was again made for the assessment of shares of stock in all corporations organized under the laws of this State, except those not organized for pecuniary profit and also except corporations otherwise provided for by law. It was further stipulated, however, that, in arriving at the value of such shares of stock, the amount of their capital invested in real estate should be deducted, such real estate being assessed the same

as other real estate. In this manner a careful distinction was made between the real estate and the other property of corporations. The legal status of corporate stock, however, in connection with the deduction of just debts has not been definitely adjudicated. In fact, this is one of the complicated questions in the history of the Iowa revenue system.

In some cases it has been held that corporate stock should not be classed as credits in such a manner as to permit the deduction of debts for purposes of assessment.²⁷⁵ On the contrary, it has been held repeatedly that holders of stock in national banks may deduct their debts — a privilege, however, which is not at present enjoyed by owners of stock in State and savings banks. The trend of court decisions, especially in recent years, has favored the doctrine that shares of corporate stock when listed in the hands of individual shareholders should be considered as credits and therefore subject to the provision regarding the deduction of debts. The law now in operation in Iowa with reference to the taxation of corporate shares comprehends: first, the total exemption of such shares in the case of certain manufacturing corporations;²⁷⁶ second, the deduction of debts from the amount of shares listed for purposes of assessment (true of national banks and in fact of corporate stock in general when not otherwise provided); and third, the listing of capital stock without granting any deduction as in the case of State and savings banks.

Since Iowa has never had what could be justly called a general corporation tax, it is difficult if not impossible to formulate many rules applicable to the taxation of all classes of corporations. With the breakdown in the administration of the general property tax one method of assessment and taxation after another has been gradually evolved, but at no time have our law-makers endeavored to create a general corporation tax. The specific methods applied to various corporations should, therefore, be briefly

reviewed; and in doing so, it is best to follow the chronological order.

It has been noted that banks of issue were prohibited under the Constitution of 1846, and that stringent provisions against this form of banking were placed in the *Code of 1851*.²⁷⁷ Nevertheless, banking associations doing a deposit and exchange business did exist during the Territorial period, the real estate and shares of stock in the same being listed under the general property tax. Even in the *Revised Statutes* of 1842-1843 the capital of exchange brokers and the property of all bodies corporate were made liable to assessment and taxation.²⁷⁸ In the revenue act passed by the First General Assembly personal property was made to include the capital stock, undivided profits, or means of any company incorporated or unincorporated.²⁷⁹ Finally, the *Code of 1851* contains a provision placing in the list of general property liable to taxation the stock or shares in any bank or company incorporated or otherwise, and whether incorporated in this or any other State.²⁸⁰

It will also be recalled that under the Constitution of 1857 banks of issue were made possible and that a general banking act and an act incorporating the State Bank of Iowa were passed in 1858. Under the former act two provisions were made regarding taxation: first, that all taxes should be levied on and paid by the corporation as such and not by the individual stockholders; and second, that the value of banking property should be ascertained annually by the Bank Commissioners, the rate of taxation being the same as that imposed on other taxable property by the revenue laws of the State. Supplementary to the general provisions above outlined, the act creating the State Bank of Iowa prohibited the General Assembly from imposing a greater rate of tax than was imposed upon the property of individuals.

During the war the national banking system was estab-

lished, and in 1866 the General Assembly of Iowa passed an act taxing the shares of such national banks. The banks were required to list the shares and were also made responsible for the tax. Years of litigation followed. The act of 1866 was declared unconstitutional on two grounds: first, that a tax on the stockholder would not permit the deduction of non-taxable United States securities; and second, that to tax capital and also shares of stock was double taxation. The taxation of shares, however, was sustained after the passage of the amendatory act of 1868 repealing the section which required the tax to be levied on the corporation as such. The ten per cent tax placed by Congress on State bank notes made their issue impossible, and accordingly the general banking act of Iowa and the State bank act were both repealed in 1870.

Subsequent history along the line of bank taxation may be briefly reviewed. Up to 1874 all personal property, which included that of private bankers, was listed and assessed each year in the name of the owner. The Fifteenth General Assembly, however, passed an act taxing the average value of moneys and credits under the control of private bankers during the year. At the same time a savings bank act was passed, providing for the taxation of such banks on their paid up capital. The Supreme Court promptly held that to tax national banks on their shares of stock and savings banks on their paid up capital did not constitute a discrimination against national banks. It was further held, however, that national bank shares can not be assessed as personal property without listing the stockholders in order that owners of stock may deduct their just debts and thus avoid taxation at a higher rate than that imposed on other moneyed capital.

As a result of numerous court decisions and frequent amendments the system of bank taxation provided in the *Code of 1897* may be summarized as follows: first, the as-

assessment of private bankers on the aggregate actual value of moneys and credits after deducting deposits and debts, the aggregate actual value of stocks and bonds after deducting the portion thereof exempt or otherwise taxed, and finally the real estate which is listed and assessed the same as other real estate; second, the assessment of the shares of stock in national banks to the individual stockholders at the place where the bank is located; and third, the assessment of the shares of stock in State and savings banks and loan and trust companies to said banks and loan and trust companies and not to the individual stockholders.²⁸¹ In a word, the taxation of chartered banks in Iowa as interpreted by Judge Emlin McClain in a leading opinion is in reality levied on capital stock surplus and undivided profits. National banks stand in a class by themselves only from the standpoint of the deduction of debts from the amount of shares listed for taxation — a privilege not granted other chartered banks.

The question may now very appropriately be asked, to what extent have banking associations emerged from the so-called general property tax? It is true that the blanket provision requiring the assessment of real and personal property did not long apply to banks. New methods of determining value largely on the basis of capital stock were soon evolved. Granting this fact, however, is it correct or scientific to assume a serious departure from the principles of general property taxation? Has there been a real change either in fiscal administration or the underlying principles of contribution? This question should be answered in the negative. If by the general property tax we mean local assessment plus the value or ad valorem principle, then this tax is quite as applicable to both chartered and private banks at the present time as in the early history of our revenue system. On the one hand, local officials still administer the law; and on the other, taxation on the basis of

capital stock surplus and undivided profits is essentially property rather than income taxation. The relative success of bank taxation in Iowa — the fact that owners of bank stock pay much more than their just share of so-called personal property taxes — should not blind our eyes to the obvious consideration that it is after all only a specialized form of the old general property tax. Taxes are collected with relative ease from chartered banks for two reasons: first, because the tax is collected at the bank through the stoppage at source principle; and second, because a somewhat fixed and arbitrary plan of estimating value has been devised — a plan whereby assessment or valuation is virtually removed from the whims of the local officials whose duty it is nominally to administer the law. The taxation of personal property in Iowa has attained the maximum of success when applied to banks simply because the minimum of administration is required. There has been no essential change either in the forms of administration or in the basic theory of contribution. In a word, banks have emerged from the general property tax largely in the imagination of theorists and not from the standpoint of a careful analysis of the facts of revenue history.

We come now to a very brief analysis of the subject of insurance taxation. In many ways insurance companies when viewed from a fiscal standpoint belong in a class by themselves. Prior to the enactment of the *Code of 1851* there was no special law applying to the taxation of insurance companies which, like many other corporations at that time, were taxed on their real and personal property. The *Code of 1851* provided, however, that all insurance companies except mutuals should be taxed one per cent for county purposes and one per cent for State purposes on the amount of the premiums taken by them during the year previous to the listing. The same section appears in the laws of 1858 and the *Revision of 1860*. In fact the taxation of insurance

premiums still prevails in Iowa and is quite general throughout the Union. The Twelfth General Assembly passed an act leaving the two per cent rate unchanged, but requiring that the whole tax be paid into the State treasury and further providing that such tax should be in full for all taxes upon the corporation or its shares under the laws of this State except taxes on real estate.

This law remained in force until 1872 when an important act was passed providing: first, an elaborate set of fees; second, a retaliatory clause which was copied and much discussed in other States, and proved to be very unfortunate; and finally, a two and one-half per cent rate on gross premiums, joint stock companies organized under the laws of this State being excluded, such tax to be in full for all taxes both State and local. Mutual insurance companies were also exempted from the two and one-half per cent tax under the *Code of 1873*.

When the *Code of 1897* was enacted the following system of insurance taxation was provided: first, three and one-half per cent on the gross premiums of all companies organized outside of the United States; second, two and one-half per cent on the gross premiums of companies incorporated in any State of the United States outside of the State of Iowa; and finally, one per cent on the assessments, dues or premiums of other insurance companies doing business in this State except county mutuals and fraternal beneficiary associations, such tax on premiums to be in full for all taxes State and local except taxes on real estate and special assessments. The discriminating rate against foreign companies was sustained on the ground that it was in the nature of a license tax imposed as a condition to do business, but the provision exempting insurance companies from local taxation was declared to be unconstitutional by the Supreme Court for the reason that it meant the application of a different rule of taxation to corporations than to individuals.

Accordingly, this provision was repealed in 1900; but the same thing was accomplished by the General Assembly in another way. In assessing the moneys and credits of an insurance company organized under the laws of Iowa the debts which might be deducted were so defined that the obligations of the company were cancelled by liabilities. With the rate on foreign companies reduced to two and one-half per cent, and State mutuals placed in a class by themselves for purposes of license taxation, the laws now under consideration are brought up to date.

As to insurance companies and general property taxation only a word need be said. The State license tax on gross premiums is essentially an income rather than a property tax. Perhaps it would be more scientific to say that it is a tax levied on the amount of business transacted. The general property tax does apply to the real estate of insurance companies, and since the decision of the Supreme Court, also to the moneys and credits of domestic associations; but it must be admitted that neither local assessment nor the ad valorem principle have any direct application to gross premiums.

From a chronological standpoint the subject of railway taxation should next be reviewed. Railroads are the most important of all the so-called public service corporations; they are especially important in the history of Iowa revenue for the reason that the general plan of taxation adopted for them in 1872 has in recent years been made applicable to some of the other public service corporations. In the foregoing chapters of this volume the whole subject of railway taxation has been examined historically and critically; and in the treatment numerous quotations from editors, legislators, judges, governors, in fact from men in various walks of life, are given. Where actual quotations are not given a digest of the argument appears; and the original sources may always be found by consulting the references. The

writer is in no way responsible for the arguments themselves nor for the drastic and partisan form in which they are frequently made. However, it is only from a full and honest investigation and exposition of all the facts and conflicting opinions of a period that one is enabled to form a sane and well poised judgment of the course of events. For example, were a person to read the *Burlington Hawk-Eye*, the *Keokuk Daily Gate City*, and the *Davenport Gazette* for the years 1870 and 1872 he might easily conclude that there were but few honest members in the legislature of the State. But were he to examine through the columns of other papers, like the *Boone Democrat* or *Ottumwa Courier*, the conditions in the interior of the State where transportation facilities were in their first stages of development and where the demand was for roads and not for taxation, he would be led to conclude that the law which now exists might have been passed without the General Assembly selling itself to the railroads. Indeed, the more one studies the history of this measure, the more he becomes convinced that its enactment was largely the result of economic conditions then prevailing in Iowa.

A careful study of railway taxation in Iowa should include the following important considerations:

First. The period from 1855 to 1862 should be judged not in the light of present conditions and theories, but rather from the standpoint of pioneer Iowa. No system should be removed from its industrial environment merely for the sake of negative criticism. The tax on the shares of stock in the hands of the individual stockholders was the application of an old law to new conditions that had not been contemplated by the framers of the law. As already explained it was one form of the general property tax. Assessment was left in the hands of local assessors and the value of railroad property was ascertained by simply listing the shares of capital stock. Difficulties soon presented them-

selves as to the proper method of tax distribution which the General Assembly sought to remedy by amendment. On the whole the law was fairly well suited to the industrial conditions prevailing at that time.

Second. The system of taxation on gross receipts was enacted as a war measure. One-half of the revenue went to the State because the State needed revenue and not because the localities felt that the measure was just. The cities especially were not long in complaining; and the "four-fifths" clause in the law of 1870 was a compromise with the strong local demands for an ad valorem or general property tax.

Third. The agitation for a property tax on railroads, which developed soon after the war and resulted in the law of 1872, was the result of conflicting economic motives. It was a sectional question and should be judged as a sectional question. The older cities and counties, which were well supplied with roads and were heavily in debt for the same, naturally desired the right of taxing the roads. It was also natural for the farmer to feel that the railroad which happened to pass through his farm ought to be taxed in the same manner as his own property. On the other hand, frontier sections would be indifferent to the whole question of taxation, their chief demand being for railroads. The cities thus desired both local assessment and local taxation, while the country at large was well satisfied with local taxation. Indeed, it may be said that the country was doubly satisfied when the railroads came forward with the proposition to diffuse the value of city terminals through the rural districts. Thus, a compromise was effected that was welcomed by practically all members of the General Assembly save those from the cities. It is not surprising that the bill passed by a large vote both in the Senate and House of Representatives.

How this compromise measure of 1872 would operate, especially in regard to the cities, was pointed out at the time

in editorials and in the speeches of Senators and Representatives. How it does operate has been explained in more than one decision of the Supreme Court.²⁸² And finally, it has been shown statistically that, on the one hand, the law deprives cities of the right to tax millions of dollars worth of property situated within their limits, and on the other, confers special favors on a small per cent of townships that happen to possess a large railway mileage. Therefore, it follows logically that the present law, since it does not operate either to the benefit of the cities or to the benefit of a majority of rural districts, can not be said to favor a large majority of the voters of Iowa. This has been precisely the situation for a generation, despite the fact that this same majority has the power at all times to enact laws.

In this connection it is perhaps desirable to correct a misleading impression that has prevailed since the present law was passed in 1872. It will be recalled that the *Keokuk Daily Gate City* predicted that the law would be permanent for the reason that it favored the country districts at the expense of the cities. Mr. F. H. Noble in his monograph entitled *Taxation in Iowa*²⁸³ takes a similar view, saying that "this system will probably be maintained, as it favors the rural districts, which have a majority in the legislature. Thus one rural county having more miles of main track than the county where the shops and costly stations are located receives more taxes." Mr. F. T. True of Council Bluffs, and other earnest workers in the League of Iowa Municipalities are inclined to take the same gloomy view.

It would seem, however, that these opinions are without adequate foundation. If the country districts as a whole were favored, the above conclusions would be justified. But this is not the case, since the benefits under the present law go first to a small minority of townships and second to the railroads which escape high municipal rates. When these facts are once fully understood the contention that the rural

members of the legislature will necessarily vote to retain the present law falls to the ground. The average man will not long vote against his own interests when once those interests are made clear to him. A few men like Governor Newbold and Judge Beck have understood this question in its true light.

Fourth. From these considerations it is evident that the local taxation of the road-bed, right of way, main track, rolling stock and franchise — in fact all forms of railroad property that have no local habitation — results in inequality from the standpoint of tax distribution. That property which has no local habitation should not be localized by the tax laws is sound economic and administrative doctrine. On the other hand, the application of the "unit rule" to terminals removes from the cities property in the form of depots, round-houses, machine shops, side-tracks, etc., which does have a definite and fixed local habitation and greatly increases the fiscal burdens of municipalities. As to the proper method of taxing this form of property, the writer does not wish to express any dogmatic opinions. He merely desires to state that in the enactment of tax legislation, good reasons exist, both from the standpoint of economic theory and administrative practice, for drawing a line of demarcation between those forms of railroad property which have a local situs and those forms which do not possess a local habitation. This principle is believed to be at the very basis of true tax reform, rendering possible both an equitable system and an efficient administration. It is more comprehensive in scope and goes far deeper into the general field of taxation than the so-called principle of the separation of revenue sources.

Fifth. Finally, it should be borne in mind that the facts revealed and the general conditions discussed in the chapters on railway taxation are by no means peculiar to Iowa. They exist in many other States; and in fact are

being eliminated only as rapidly as the complex question of taxation is placed in the hands of competent officials. On every hand there is a growing interest in the great problem of equitable taxation; and the conviction is coming to prevail that the solution of this problem must come, if it comes at all, through an efficient non-partisan administration. There is no royal road to the goal of equal taxation. In Iowa as in other States it will be the fruit of hard labor, of ripe scholarship, and above all of honest purpose.

Laws should be enacted not for any particular class, but for the whole people. While railroads and other quasi public corporations have obligations to the public, they also have legal and economic rights which the public ought to respect. It can not be denied that all corporations should be required to bear their just share of the public burdens. But they should not be required to bear more than their just share. How much a railroad or other corporation should pay ought always to be a question of fact and never a matter of opinion. Industrial life has become exceedingly complex. Institutions that were suited to earlier conditions no longer suffice. The problem of taxation is especially recognized by all authorities to be one of the most difficult. It is the business of the State to approach this problem with firmness and candor, and to employ the most competent men to aid in its solution.

In concluding this review of the history of railway taxation, attention should be called to the important relation between that history and the principles of the general property tax. Up to 1862 the general property tax was made to apply both from the standpoint of theory and administration. Local assessment and the value principle prevailed. In the decade following 1862 gross receipts taxation was instituted largely as a war measure. The law of 1872 placed railroad assessment in the hands of a State

board, where it has remained to the present time. In a word, local assessment was rightfully destroyed, but the theory of property taxation was written into the law and is now more firmly established than at any previous time in the history of our revenue system.

Passing from railroads to similar public service corporations the historical analysis may be briefly made. The property of palace, buffet, sleeping, and dining car companies, freight line and equipment companies, and the like, is assessed in the same manner as railroads proper. These corporations were treated in the chapters on railway taxation and, therefore, the same general conclusions apply.

Of all the leading public service corporations doing a State wide business the property of express companies is perhaps the most intangible. It consists almost entirely in the right to do business over certain railroad or steamship lines and at certain terminals. The tangible property of these corporations is relatively a negligible quantity, and for that reason efficient assessment has always been a difficult problem. Prior to 1868 express and telegraph companies were included in the general property tax. The Twelfth General Assembly passed an act retaining both local assessment and the value principle, but providing a special method of determining value. The property of all express and telegraph companies under the provisions of the act was included in the valuation of the personal property of each company, the assessment being made at each office where such company or companies transacted business, the amount of personal property being arbitrarily fixed at forty per cent of the gross receipts. In addition it was further provided that all real and personal property owned by telegraph or express companies should be taxed in the same manner and by the same officials as their other real estate. In other words, the law of 1868 preserved the principles of general property taxation, but established a fixed and arbitrary rule of listing personal property.

This rule of assessment soon proved to be unsatisfactory and was repealed in 1870.²⁸⁴ Both telegraph and express companies were again assessed on the basis of their real and personal property, no special method of listing being applied. In the case of express companies no change was again made until 1896. At that time it was discovered that the property of express companies was not only intangible but also elusive, and in fact had practically evaded all taxation for years. Accordingly, Senator Funk drew up a bill taxing express companies two dollars on each hundred dollars of their gross receipts. In the law as passed the rate was reduced to one dollar. Nevertheless, the act served the purpose of not permitting express companies to get entirely out of the habit of contributing at least a small quota to support the burdens of government. The tax thus levied was paid into the State treasury and the rate was increased to two dollars in 1898. It was finally provided that nothing in these acts should be construed to release express companies from assessment and taxation of their tangible property in the same manner as other tangible property was assessed and taxed.²⁸⁵

Two years later, following a Supreme Court decision which required the property of all corporations organized for pecuniary profit to pay local as well as State taxes on the same basis as the property of individuals, the whole system of taxing express companies was changed. The Cheshire law represents a change from the gross receipts to the ad valorem system of taxation. Many elements are considered by the Executive Council in the assessment of express companies, but by the provisions of the law of 1900 valuation was made with primary reference to the aggregate market value of all the shares of capital stock plus the cash value of the mortgages. In this way a rather fixed and arbitrary system (very objectionable to the representatives of these corporations) was established, which,

however, has been modified and made more elastic by amendments passed since 1900. At the present time the Executive Council is given practically the same latitude in assessing the property of express companies as in the assessment of railroads and telegraph and telephone companies. For all these and similar public service corporations what practically amounts to self-assessment has been instituted. The same plan of tax distribution now applies to express companies as to the property of railway corporations.

Returning to the study of telegraph companies it will be recalled that the law of 1870, which again provided for general property taxation, was changed in 1878. The law of 1878 is one of the most instructive revenue acts ever passed by the General Assembly of Iowa.²⁸⁶ The ad valorem principle was retained; taxes were paid into the State treasury and were in lieu of all other taxes, State and local; and finally, the average rate of the general property tax, State, county, and municipal was levied. State assessment, exclusive State taxation, and the ad valorem principle were embraced in this law. By a decision of the Supreme Court this law was made applicable to telephone companies. Finally, in the *Code of 1897* more elaborate reports, including gross receipts, operating expenses, and the like, were required to be submitted to the Executive Council.

This whole system, however, after being in practical operation for more than twenty years, was destroyed by a Supreme Court decision. But the ad valorem principle and assessment by the Executive Council were both retained. The change made was one of taxation, not of assessment. The plan of tax distribution was made similar to that which had been applied to railroads since 1872 and which was by the same General Assembly being applied to express companies.

In completing this analysis of the history of taxation of public service corporations doing a State wide business it

should be noted that the most significant fact of that history is the adherence to an ad valorem system, or in other words, to the underlying principles of the general property tax. In fact, the only real exception to this rule was the gross receipts tax applied to railroads as a war measure from 1862 to 1872, and to express companies from 1896 to 1900. Under the law of 1868 as repealed in 1870 the forty per cent of gross receipts was merely a method of ascertaining the personal property of telegraph and express companies. In view of these facts it is apparent that any plan of scientific reform for the assessment and taxation of State wide public service corporations should be based on the ad valorem principle as the only safe corner-stone.

In regard to the assessment of public service corporations a universal change from a local to a State system has been noted. It would seem that this is both a desirable and a necessary change. Any program of sane, well balanced reform must, therefore, recognize the principle of State assessment. It logically follows from these considerations that only two fundamental changes are necessary: first, in the plan of tax distribution all non-local values should be taxed solely by the State; and second, a State tax commission for expert assessment in lieu of the present ex officio assessment by the Executive Council should be created.

THE INHERITANCE TAX

Concerning the history of inheritance taxation but little can be added to what has already been said in Chapter X. A proposal for this form of taxation was definitely outlined in the report of the Revenue Commission submitted to the Twenty-fifth General Assembly and also in the report of the Code Commissioners in 1895. The law, as first passed in 1896, provided for a tax of five per cent on all estates above one thousand dollars passing to collateral heirs or strangers in blood. At least four points should be remem-

bered concerning our present inheritance tax: first, that the law itself is a disjointed piece of legislation and should be entirely redrafted; second, that the administration of the same has been indefinite and decentralized; third, that the tax is levied on the estate as a whole and not on the individual inheritance; and finally, that the so-called thousand dollar exemption is merely descriptive of the estates liable to the tax and is not an exemption as that term is ordinarily understood.

The history of inheritance taxation in Iowa, the same as the history of the general property tax, seems to indicate the necessity of a thorough reorganization of our assessment system. For a number of years this tax was practically a failure, and is now only a partial success for the obvious reason that no county official has been held definitely responsible to the State treasurer. The county administration, in a word, has been broken up and dismembered and made too largely a judicial function. In the second place, sixteen years of history have taught the desirability of a separate measure rather than an amendment to the present law in case it is desired to create some form of direct inheritance taxation. The constitutionality and practicability of a tax on estates passing to collateral heirs have already been established. With a better organized fiscal administration in the counties and a more carefully drafted law, the collateral inheritance tax may easily be made a very important part of our revenue system. It is a simple, just, and productive tax. Any plan of taxing individual inheritances passing to direct heirs will necessarily involve different legal and possibly constitutional principles, and should, therefore, stand or fall on its own merits.

Finally, the history of the inheritance tax has made evident the necessity of popular education along this line. Of all forms of taxation, it is, perhaps, the most democratic; yet the farmer members in the House of Representatives

have been the strongest and most uncompromising opponents of the measure. On the other hand, the Senate has been uniformly favorable to this class of legislation. It is a strange fact that the very people whom inheritance taxation both direct and collateral is everywhere designed to benefit should be unfriendly to the plan.

CONCLUSION

In concluding this historical analysis of the Iowa revenue system attention should be called to the following basic facts: first, the ex officio and decentralized fiscal administration; second, the low and grossly unequal assessments; third, the failure to reach moneys and credits; fourth, the nature and purpose of exemptions; and fifth, uniformity of taxation which necessarily includes equity in the method of tax distribution as between the various units of government, State, county, and local. The second and third facts are a logical result of the first; for it can not be denied that decentralization, on the one hand, and the ex officio, planless character of our fiscal administration, on the other, are primarily responsible for the present chaotic and unsatisfactory conditions.

Concerning the decentralized fiscal administration in Iowa enough has already been said. In the long contest between the county and township systems the victory was won by the latter. At present the assessment of all property in the State save that of certain State wide public service corporations and the equalization of the same as between individual taxpayers are both strictly local functions. Local assessment is, therefore, the basis of the fiscal pyramid; and for that reason it may justly be said that our revenue system rests upon foundations of sand. Any program of reform which does not look this condition squarely in the face and provide for a gradual change from township to county assessment, or at least to a centralized supervision,

does not indicate progress and should, therefore, not receive the endorsement of the people. It should not be forgotten, however, that this change can be accomplished only by evolutionary and not by revolutionary methods.

As to ex officio assessment and equalization it can not be denied that this is one of the underlying causes of the present planless scheme of taxation. Equalization in Iowa is almost exclusively an ex officio function. Town or township trustees, the city council, the county board of supervisors, and finally the Executive Council are all composed of men elected for purposes largely foreign to the administration of revenue laws. With decentralized assessment and an ex officio perfunctory equalization the only surprise is that we have any system of taxation worthy of the name.

The two inevitable results of this absence of efficient administration have been: first, low and grossly unequal assessments; and second, almost a complete failure to reach personal property, especially moneys and credits. Attention has been called to the inequalities of assessment as between counties, cities, towns, townships, and most important of all, between individuals. The fact that practically half of the real estate and perhaps nine-tenths of the personal property in Iowa does not contribute a dollar to the public burdens because of under assessment and evasion has been made clear to the reader. Startling as it may seem, probably two and one-half billion dollars of tangible property subject to taxation under the laws of Iowa has not yet discovered a local habitation on the assessment roll. This fact becomes more significant when we realize that this is nearly ten times the amount of moneys and credits now listed for taxation. It would be superfluous to suggest that there is something radically defective with a plan of taxation where half of the real estate and a much larger portion of the intangible property does not bear any share of the public burden.

In this connection it should be stated that all taxation aside from a personal or poll tax rests in the last analysis either on economic value or on credit instruments supposed to represent economic value. In Iowa, as in nearly all the States of the Union, an effort is made to tax both real value and credits — the mere representatives of economic value. The obvious and logical result is the failure of both. While a game of hide-and-seek is being played — efforts to conceal, on the one hand, and discover, on the other, pieces of paper in some strong box — the assessor fails to list the property which this very paper represents, the logical result being that the paper itself and the economic goods without which the credit instrument would be worthless both escape the burden of taxation.

The fiscal drama which has been enacted over and over again in Iowa may be easily stated. On the time honored principle that every desire creates its own conscience, the owner of moneys and credits claims that if these are listed he will be obliged to pay taxes on their full value while the real property of the State is being assessed at about half of its value and some corporations at less than half the market value of their property. In the same manner, the farmer placidly explains the low standard of civic morality which proposes to assess his farm at its full value, while public service corporations are not paying their just share of the public burdens and credit instruments are practically evading all taxation. Under these conditions, the farmer naturally, perhaps justly, believes that he is imposed upon when land, improvements, live stock, and the like, which would sell in the market for twenty-five thousand dollars are listed for ten thousand and assessed at twenty-five per cent of that amount.²⁸⁷ As to the public service corporation its position is so unfortunate as to call for an expression of real sympathy. The manager of such a corporation can easily point to the low assessment of farm property, on the

one hand, and the almost complete failure to reach moneys and credits, on the other. But in order to hold his own in this game of fiscal competition — or to phrase it differently, civic perjury — he is obliged frequently to list property for fifty thousand dollars for purposes of taxation which he may be forced to declare almost in the next breath is worth half a million dollars from the standpoint of rate regulation. As a matter of charity, at least, something should be done to relieve this unfortunate situation of the captain of industry.²⁸⁸

The only remedy for the conditions herein outlined is: first, a coherent centralized fiscal administration; and second, the efficient assessment of value which actually exists rather than a continuation of our fruitless efforts to locate the many forms of credit which are based upon that value.

By this it is not meant to advocate an immediate and wholesale exemption of credit instruments from all taxation. On the contrary, such a policy would be unwise, at least until certain other reforms have been instituted, and would doubtless bring hardship to those communities where credits pay a relatively large per cent of the burden of taxation. Along this and similar lines a policy of evolution not revolution will commend itself to the constructive statesman. With increasing public expenditures and the constant demand for larger appropriations, State, county, and local, any plan of reform which contemplates a serious reduction of revenues is sure to meet with determined and, perhaps, successful opposition. This being true, any legislation which proposes to exempt certain credit instruments from taxation without at the same time providing for the more efficient assessment of the actual value behind such credits so that revenue will not be reduced is, to say the least, of doubtful expediency. It should not be forgotten that the basic reason why State laws so uniformly require the taxation of credits is the deep seated feeling of the people that the well-to-do —

the money lenders — are not bearing their just share of the fiscal burden, and that taxation of credits falls upon this class. For this reason and others which might be mentioned, it may be held that credits may be wisely exempted from general property taxation as rapidly as a workable substitute is provided and the assessment of actual value is rendered more efficient, to the end that the wealthy class may be required to bear a larger rather than a smaller part of the burdens of government. In other words, a program of reform to be permanently successful must have positive as well as negative elements. The history of the Iowa revenue system, when considered from the standpoint of credit taxation, certainly proves that legislation which proposes merely to destroy without at the same time building up fails to satisfy the demands of the people.

Finally, it may safely be affirmed that any comprehensive program of reform should embrace the following essential elements: first, a strong centralized fiscal administration, without which efficient and uniform assessment is impossible; second, a more equitable plan of tax distribution as between city, town, township, county and State; and finally, as soon as conditions will permit, the gradual exemption of credit instruments from general property taxation, and at the same time the evolution of a substitute or substitutes for the so-called personal property tax. In the judgment of the writer, the third development should for the most part follow rather than precede the other two. The problem as a whole must necessarily obey the laws of evolution.

XXV

COMPARATIVE STUDY AND THE PROBLEM OF TAX REFORM IN IOWA

Of all the many and varied reform movements which are now engaging the attention of the American people, and especially the people of this State, it may safely be said that none is of more immediate interest and importance than the question of how to devise an efficient and equitable system of taxation. Yet the public has been slow to realize the significance of the problems involved. Indeed, the opening of the present century found less than a half dozen States with anything definite accomplished in the way of fiscal reform; and, for the most part, the general property tax, resting upon local assessment and perfunctory equalization, is still retained as it has come down to us from colonial days.

The last ten years, however, have witnessed a strong and quite general movement along the line of scientific tax reform. The creation of a considerable number of State tax commissions (many of them permanent bodies) and also the founding of the International Tax Association indicate the growing public interest in fiscal problems. Appendix A below contains the Constitution and other facts regarding the International Tax Association which will be of interest to the general reader as well as to the student of taxation.²⁸⁹

The State of Iowa has been singularly free from any determined and well directed effort along the lines of revenue reform. A number of conditions have tended to produce this result. In the first place, as has already been pointed out, during the last few years, while many other States have been busy revising their tax laws along scientific lines, Iowa has

been actively engaged in other reform movements—the regulation of railroads, two cent fares, primary election, and the like. At the present time, moreover, it is true that taxation along with other State problems is being practically forgotten by the average voter who, nevertheless, is actively interested in the controversy over the tariff, conservation, and other national problems. These conditions are cited not in criticism of any faction or political party but merely as a statement of fact.

In the second place, whenever Iowa law-makers have endeavored to reform the general revenue machinery they have uniformly proceeded along lines similar to those followed by Congress in drafting a tariff bill: in other words, they have endeavored to do the whole thing at once and that without any definite knowledge of facts or underlying principles. As it is impossible to revise all the schedules of the tariff at a single session of Congress on account of industrial and sectional conflicts, so it is impossible for any one General Assembly to re-shape the whole revenue system of the State along scientific lines. Among tax commissioners and other fiscal authorities this fact is regarded as a truism, yet from the *Revised Statutes* of 1842-1843 to the *Code of 1897* our law-makers have undertaken the absurd task of passing omnibus tax reform bills. So long as this policy is followed there will be much politics, but little sound finance. The multiplicity of conflicting interests, which always arises, has defeated and will continue to defeat any constructive program of reform.

When a dozen great tax questions are all included in the same bill it requires no prophet or statesman to know that passion, prejudice, and local selfishness will prevent the proper consideration of the problems involved on their merits. In all such cases we have no end of log-rolling — perhaps a wealth of statutory verbiage, but no legislation worth while. It is evident that any sound fiscal reform must be ac-

accomplished along evolutionary not revolutionary lines. Furthermore, while each part should be considered with intelligent reference to the whole, every tax problem which is brought forward should be debated and passed or defeated on the basis of inherent merits and not consigned by the "practical" man to the limbo of party or factional politics. It is believed that a considerable number of people are coming to apprehend these facts. When they are fully comprehended a great step forward will have been taken in the promotion of constructive legislation.

In the third place, it should not be forgotten that it is equally essential to consider every tax problem as a part of a carefully planned and well proportioned revenue system. Until recently not only law-makers but many tax theorists have disregarded this simple but obvious principle — which partially explains the present chaotic condition of the tax systems of the American States. If it is true that the second criticism noted above applies to the machinery of levy, assessment, and equalization outlined for the general property tax in Part I of this work, it is equally apparent that the failure to understand the revenue system as a unit is applicable with even greater force to the special problems of taxation presented in Parts II and III of this work. On the one hand, legislators have in many cases failed to consider tax problems on their own merits without political log-rolling, and on the other, much special legislation has been passed with small regard for that organic fiscal unity that ought to prevail in any State.

All of these conditions are, moreover, due to the same basic cause, a consideration which brings us to the last and most important reason why Iowa has thus far not made any substantial progress in the solution of fiscal problems; namely, the failure of the General Assembly to create a permanent tax commission clothed with real powers of investigation and administration. The necessity of establish-

ing such a commission is, therefore, of prime importance in any consideration of the problems of tax reform in this State.

THE TAX COMMISSION MOVEMENT

It is now generally conceded that the banner of revenue reform is being carried by the State tax commissions. In States where such commissions have been employed (especially when made permanent in character), real progress is being made. In States where the central fiscal administration is placed in the hands of *ex officio* bodies like the Executive Council of Iowa, and where the investigation incident to the enactment of tax laws is made by legislative committees, practically nothing worth while has been accomplished.

Few if any problems are more involved and require more careful study than those relating to taxation and the taxing power. Certainly no question is brought closer home to the average property owner. And yet in Iowa (and the same is still true in a number of other States) the central supervision and control of this important work is placed in the hands of an *ex officio* body whose regular duties have little or nothing to do with taxation; and at the same time the labor of collecting and classifying the facts essential to the enactment of wise tax laws is entrusted to a partisan legislative committee which meets once in two years and the personnel of which changes from session to session. This statement is not to be understood as a criticism of men. The Executive Council in Iowa has been composed of men of integrity and ability, thoroughly capable of administering the revenue system if they could give all their time to the work. The fault is not in the men but rather in the *ex officio*, perfunctory system, the evolution of which has been traced in earlier chapters.

At the present time the revenues of Iowa, both State and local, amount to over thirty millions of dollars. When the

people of the State become convinced that a business involving this vast sum of money annually is worthy of the constant attention and study of a dignified body of men, assisted by trained experts, then the first chapter in the labor of scientific tax reform will have been written. If individuals or private corporations handled their business in the same lax and slovenly manner that Iowa has always administered its revenue laws the immediate and inevitable result would be bankruptcy. Any sophomore knows this to be a fact; and yet the people of Iowa continue to tolerate these conditions. We repeat that the corner stone of any real tax reform is a permanent State tax commission; and until Iowa is found in the column of those States having such a body, we will be supplied with any amount of temporizing makeshifts, sectional and partisan log-rolling, but we can not rightly expect the evolution of a well conceived and wisely balanced revenue program.

Just at present, however, the commission idea is somewhat discredited in the minds of a few practical men, largely for the reason that some commissions have accomplished little or nothing in the past. This was especially true of our own Revenue Commission which was created in 1892 and reported in 1893. In a less degree it was true of our Educational Commission which made its report to the General Assembly in 1909. These failures seem to satisfy those who are hunting for an opportunity to be satisfied that the commission idea is expensive and impracticable. As a matter of fact these instances prove nothing save the foolishness of the policy of providing for commissions without at the same time granting the necessary powers and making an adequate appropriation to carry on the work of investigation. When the Iowa Revenue Commission was created in 1892 it was not clothed with the necessary powers; nor was a sufficient appropriation made for the support of its work. Governor Boies accomplished all that could be expected under the

conditions; but he was not responsible for the conditions which prevailed in 1893 when the Commission made its report. The experience of that Commission does prove that when any similar body is created in the future the General Assembly should grant the necessary time, power, and money to make a thorough investigation and a dignified report. It is much better to do nothing than to provide a weak body whose report will not be taken seriously either by the people at large or by their chosen representatives.

In regard to the tax commission movement the attention of the reader is called to the fact that Appendix B gives a complete up-to-date list of both the temporary and permanent tax commissions of the United States. The list is alphabetically arranged by States, furnishes a complete summary of earlier commission reports, and gives the date of organization of the present commissions. The number of members, salaries, terms of service, and the like are also given. It appears that at the present time eighteen States have either a permanent tax commission or an official known as a permanent tax commissioner. These States are: Alabama, Connecticut, Indiana, Kansas, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Oregon, Texas, Washington, West Virginia, Wisconsin, and Wyoming. Thus it will be observed that every section of the Union is represented, even the newer western States. Of the eighteen permanent tax commissions or permanent tax commissioners, one was created in 1900, two in 1901, one in 1904 and 1905 respectively, four in 1907, two in 1909, and one in 1910. The remaining six were established prior to 1900 and are found in the States of Indiana, Maryland, Massachusetts, Michigan, New Jersey, and New York. This is the ground for the statement that very little real progress had been made along the line of scientific tax reform previous to the last decade. The permanent non-partisan tax commission is essentially a re-

cent institution, and there is every reason to expect its rapid extension during the next few years. A number of laws creating permanent State tax commissions will be found in Appendix B.²⁹⁰

As to temporary tax commissions it appears that during the last few years such bodies have been established in California, Delaware, Illinois, Louisiana, Maine, Missouri, New Hampshire, Pennsylvania, Rhode Island, and Vermont. This list does not include any temporary commission created prior to 1900. The California commission authorized by an act of the legislature in 1905, consists of six members including the Governor as Chairman, two State Senators, two Assemblymen and one expert on taxation. This commission has not been discontinued and is likely to become the basis of a permanent body. The Delaware commission, created in 1907 and continued in 1909 for two years longer, is composed of nine members, three appointed by the Governor, three by the President of the Senate, and three by the Speaker of the House of Representatives. The Illinois commission, provided for by an act of the legislature in 1909, is composed of seven members appointed by the Governor. In Pennsylvania a joint special committee of the Senate and House of Representatives was appointed to make a report to the next legislature; and in Rhode Island a committee quite similar in character was provided.

From this brief statement of the tax commission movement it is apparent that the tendency has been, first, to create special or temporary bodies for purposes of investigation, framing of reports, drafting of bills, and the like. In States where real progress has been made these temporary bodies, however, have been replaced by permanent organizations clothed with extensive powers of supervision and administration. It is also significant that in some States the legislature has retained the power of naming certain members of the temporary commissions. For a

body whose function is one of investigation and the drafting of bills rather than administration, it is believed that this is a wise provision. Mention should be made of the personnel of the California commission, composed as it is of the Governor as chairman, who ought to be the acknowledged leader of any tax reform movement, two Senators, and two Representatives who are in a position to guide and defend bills in the legislature, and finally a tax expert who has spent years in the study of revenue problems.²⁹¹

But whatever the form of such a commission, it should be regarded merely as a necessary stepping stone to a permanent non-partisan board, paid liberal salaries and giving all their time to the work. The powers and duties of a commission thus constituted will be outlined in the following pages. Through the remainder of the chapter we will assume the existence of such a body, without which constructive tax legislation on the one hand and efficient financial administration on the other are alike impossible.

COUNTY ASSESSMENT

It will be recalled that during the first three decades following the organization of the Territory of Iowa a compromise was being gradually effected between the township and the county systems of local government. The question of the proper distribution of fiscal authority naturally became a part of this compromise. After several changes from county to township and from township back to county assessment the township system was permanently established in 1858. It has also been made clear that a number of compromises gave the substance of authority to the township when considered from the standpoint of equalization — the powers of the county and State boards of equalization being merely nominal and perfunctory.

In other words, from the all important standpoint of as-

assessment and equalization our law-makers brought about a fiscal decentralization entirely out of harmony with the rapid industrial centralization and phenomenal growth of complex, intangible values which was to follow. The machinery of assessment outlined in the *Code of 1873*, which has come down to us practically unchanged, had all of the elements of failure and in fact had nothing to recommend it save the unreasoning prejudice of the masses for township government. Even in 1872 township assessment was so hopelessly out of joint with the times that the railroads demanded and secured State assessment — a privilege which has since been extended to other State wide public service corporations.

Unfortunately, however, this assessment was placed in the hands of an *ex officio* body, and so was made largely nominal and perfunctory. As has already been pointed out the local assessor, on the one hand, and the meaningless *ex officio* board of assessment or equalization, on the other, together constitute the most important factor in the so-called failure of the general property tax. This being true it follows logically that the real solution of the principal revenue problems lies in fiscal centralization. The administrative decentralization which was an accomplished fact when the *Code of 1873* was adopted, and which has remained substantially unchanged for a generation, must be reformed root and branch before a modern system of taxation is possible.

This fiscal centralization, which is a *sine qua non* of real progress, can be accomplished by making two substantial changes in the present revenue machinery: first, by creating a permanent State tax commission; and second, by providing for county assessment as a logical and necessary supplement to such a commission. A permanent commission thus constructed should be given general and complete supervision of the work of county assessors, in fact of the whole revenue system. By calling annual or at least bien-

nial meetings of county assessors, who in turn could have county meetings of their deputies, the central body would be kept closely in touch with conditions in every part of the State and through oral and printed instructions could assist deputies in making uniform assessments at full value as required by law. With deputies and county assessors alike subject to the advice and authority of a competent tax commission, there would result a centralized and efficient administration.

In regard to the method of selecting county assessors experience differs widely in different States. Appendix C contains a complete list of the States having county assessment, giving method of selection, term of service, and other facts relative thereto. At least three possible methods present themselves: first, election by the people in the same manner as regular county officials; second, appointment by the county board of supervisors or a similar body; and third, appointment by the State tax commission. While it may be admitted that appointment by the county board or even by the tax commission may in the end prove both practicable and desirable in order to secure administrative efficiency, one is inclined to believe that the elective principle should be given a fair trial. The people are opposed to the multiplication of appointive offices, and therefore all changes from the elective to the appointive principle made to promote administrative efficiency should be evolutionary and not revolutionary. One is not surprised to learn that Kansas, which provided for the appointment of county assessors by the various boards of county commissioners in the law of 1907, returned to the elective system in 1909. In the long run appointment may prevail for purely administrative positions; but in fiscal affairs especially it has been customary in the past to prove all things over and over again, holding fast to that which is not absolutely intolerable.

As to deputies, if not appointed by the county assessor they should at least be removable from office at his pleasure. It may be expedient from the standpoint of practical legislation to follow the example of Kansas and provide for the appointment of certain township officials in case they are satisfactory.²⁹² These details, however, can be trusted to work themselves out along right lines. One thing is reasonably certain, namely, we should not hope to accomplish in one session of the General Assembly that which in the ordinary course of social evolution would require at least a decade and perhaps a generation.

The considerations favoring county assessment are many and weighty. In the first place, it was in existence most of the time from 1838 to 1858, being displaced by the wave of sentiment favoring the township system of local government brought into Iowa by settlers from the northern group of States. The reestablishment of the county as the dominating fiscal unit would, therefore, not be an academic or doctrinaire scheme. It would be founded upon actual experience. In the second place, county assessment in some form is now operative in about two-thirds of the States and the demand for the same is increasing in a number of others.²⁹³ It is especially significant to note that, among the States having county assessment are South Dakota, Nebraska, Kansas, Missouri, Illinois, and Indiana — all near neighbors of Iowa. Add to this the fact that Minnesota is about to follow the example of Kansas and adopt the plan, and finally that sentiment along the same line is growing in Wisconsin, there is every reason why the people of Iowa should commence to think seriously of greater fiscal centralization.²⁹⁴

Finally, the introduction of county assessment would simply be applying the same form of administration as has always existed for the collection of taxes. It will be recalled that the effort to make the collection of taxes a township function in 1868 was not regarded with favor by the people.

When it is recalled that the levy and collection of taxes as well as some measure of equalization have always been largely county functions, it is obvious that a change from township back to county assessment would not be out of harmony with our traditions and administrative policies.

Thus far, two steps in a program of fiscal reorganization and reform have been outlined: first, assessment of the general property of the State by county assessors and appointed deputies; and second, the assessment of certain State wide public service corporations by a permanent non-partisan State tax commission, which body should also be given general supervision and control of the whole revenue system. In other words, efficient centralized assessment is proposed in place of the decentralization which now exists. For railroads and other similar public service corporations this means real scientific assessment by the tax commission itself in place of the *ex officio* and therefore perfunctory valuation now made by the Executive Council. Thus many *ex officio* boards would either cease to exist or at least would not have any important functions to perform, the revenue system being operated by real machinery of administration rather than by meaningless statutory forms. Neither county assessment nor any other form of local assessment standing alone, but county assessment under the constant supervision and efficient control of a tax commission is the true goal of scientific tax reform.

In concluding this line of thought it is appropriate to quote the views of the Minnesota Tax Commission in regard to the essentials of a county assessor system:

A number of vital points in the plan may well be considered here. While some of the states provided for the appointment of the county assessor by the county commissioners, others have enacted laws which make the assessorship an elective office. Perhaps, all things considered, the latter method is the wisest. While it may be said that an assessor, if elected by popular vote, would truckle

to public opinion, nevertheless a long term of office, a fair salary and support in his office by a permanent tax commission, would go a long way toward remedying a defect of this kind. The term of office might well be placed at four years and the salary fixed by population and area of county. One further feature remains to be considered. Equality of assessment, as well as uniformity of assessment, must be considered from both the county and state point of view. The necessity of a state wide body to supervise assessments and to secure uniformity of action may be accepted without further argument. The need of control over county assessors in their work appears to be essential to the success of the plan. Such failures of the county assessor system as have been recorded are due to the absence of a superior power to remove the assessor who failed to do his duty. That it would be successful under the direction of a state tax commission is clearly proved in the supervisor system in vogue in Wisconsin, which, while an advance over the system existent in Minnesota, has all the defects due to too many officers doing a piece of work in too short a time; but it possesses advantages in the uniformity of assessment gained by the supervision of the assessors by the county supervisors of assessments.

The state systems indicated in the schedule above do not provide for state meetings, with two or three exceptions, or for the specific removal of the county assessor, except in the instances of Arizona, Colorado, Georgia, Idaho, Illinois, Missouri, Nebraska, New Mexico and Virginia. In these states no uniformity of removal power exists, some of the states placing the power in the hands of the governor, others with the courts, others with the boards of equalization. None of the States have carried the county assessor plan to its logical conclusion. If such a system were created, the assessor would be elected for four years, paid a fair salary, required to meet with the tax commission, subject to their supervision in his work, and removable by the same body if he failed to perform his duties as prescribed by law.

To continue the discussion, a county assessor system possesses, to put it briefly, the advantages that go with a permanent officer, who in time becomes an expert, capable of making with his deputies an equitable, just and uniform assessment. Meeting in annual

conference with the tax commission, the county assessor will come to a clear and uniform understanding of the laws and work of listing property. Supervision and direction by the tax commission will put him under the necessity of performing his duties according to law, and his election by the people will give them the opportunity of placing their approval or disapproval upon his work. Such a system would mean a great reform in the assessing now in vogue in Minnesota.²⁹⁵

UNIFORM ASSESSMENT AT ACTUAL VALUE

We are now in a position to enter upon a brief discussion of what may be regarded as the very heart of the fiscal problem. Uniform assessment of property at actual value has always been the spirit and letter of both constitutional and statutory law in Iowa. By actual value is not meant value measured by the results of a forced sale, but as determined in the ordinary course of trade. Nor is it contended that this rule of assessment should be applied to all classes of property. It is logically applicable only as far as it is practicable and desirable to employ the ad valorem principle. This means that in a State like Iowa, where fortunately ad valorem taxation is firmly rooted and extensively applied, uniform assessment at actual value is a vital and paramount consideration. The only question that now presents itself is, therefore, how can we hope to realize that which has always been our leading fiscal ideal?

The answer to this question has already been given, namely, by abandoning fiscal decentralization and developing a centralized revenue system in which first the State and then the counties shall be the dominant units of administration. The full meaning and scope of this program of reform can only be realized when the experience of other States is examined and compared with that of Iowa. Low assessment, on the one hand, and gross inequalities between counties, townships, different forms of property, and most

important of all between individual taxpayers, on the other, are not peculiar to Iowa but have prevailed, and in fact still prevail, in many States of the Union.

Space will not permit a detailed presentation of the facts concerning low and unequal assessments in other States; mention will be made of conditions in only a few States where tax commissions have made a careful study of the facts.²⁹⁶ Wisconsin ranks high among the list of States which have the advantage of permanent tax commissions. According to the first report of the Wisconsin commission — then a temporary body — made in 1898, the estimated true value of taxable property in Wisconsin according to the census of 1890 was a billion and a half of dollars, while the total assessed value for the same year was less than six hundred millions. “When it is considered that census reports of true value are necessarily incomplete, it does not seem improbable that the discrepancy between assessed and true valuation in this State in 1890 was not far from \$1,000,000,000.”²⁹⁷

Continuing the same thought with special reference to inequalities of assessment the Wisconsin commission observes: “If it were a fact that our assessors had simply valued all the taxable property of the state at a uniform rate of one-third of its true value no one could complain; but a very slight investigation discloses the fact that some classes of property escape assessment almost entirely, while others are assessed to their full value and occasionally beyond.”²⁹⁸ In fact, the whole subject of low valuation and unequal assessment in their relation to the local assessor was treated with much clearness and force in this preliminary report.²⁹⁹

The language of the report regarding the assessment roll is especially strong:

But this so-called assessment roll, with a piece of perjury attached, in the form of the assessor's oath, is solemnly accepted as

the basis on which citizens are asked, and virtually forced, to make their contribution to the heavy and constantly increasing burden of taxation. These perjured documents are also supposed to form the basis of the county equalization and ultimately the basis for the apportionment of state taxes. They are in fact, in most instances, discredited, and almost wholly disregarded. The legislature itself recognized their unreliability by directing the abstracts of assessments to be supplemented by statistics of population and such other loose data as may be gathered, to aid boards of equalization to guess at the value of taxable property in the various districts. The county assessment becomes a disgraceful struggle between the members of the county board, each striving to help his own district at the expense of the others. The members of the county board from the towns are often arrayed against those from the city and whichever side is in the minority immediately proceeds to make more towns or wards, as the case may be, in order to get more votes.³⁰⁰

In their report for 1901 the same commission made a more exhaustive study of the assessment problem. After making a careful comparison of assessed and sale value the following conclusions were reached:

The mandate of the statute that property shall be assessed at the true or cash value has never been followed. Assessments were made at varying percentages of the true value, so that heretofore no one could form an intelligent judgment of the approximate value of the taxable property in the state. The variation in the percentages of the assessed to true value, even in towns, cities and villages of the same county, was often very wide, and in some instances so remarkable that such divergence, year after year, should have escaped the scrutiny of equalizing boards causes wonder.³⁰¹

The actual value of taxable real estate in 1901 as determined by an investigation of sales was \$1,192,867,499; while the assessed value of the same as made by local assessors and perfunctory boards of review was only \$518,824,553, thus representing an assessed value of only

43.4 per cent of the aggregate actual value.³⁰² As a remedy for these conditions, the following suggestions are made in the report:

1. Close supervision of the work of local assessments by or under the direction of this commission or some other state officer or board, equipped with sufficient specific authority to efficiently perform the work of such supervision.

2. Abolition of the present mode of choosing assessing officers by vote of electors or appointment by local officers, and, in place thereof, substitution of provisions for their selection in some mode calculated to secure more efficient men and make them free from political or local influence, so far as practicable, with tenure of office to depend upon efficient service. Further features might be included in such plan, viz.: larger assessment districts; less frequent assessments; sufficient time to make each assessment properly, and sufficient compensation to command the services of capable men.³⁰³

In the report for 1903 one finds similar conclusions, together with a brief reference to the various acts which provided for a more centralized revenue system. Concerning the county supervisor of taxes — an official with small pay and little real authority — the following statement should be noted:

The commission desires to signify its approval of the law creating the office of county supervisor of assessment as well as the work of the supervisors during the first, and necessarily most difficult year of their existence.

It is established beyond controversy that they have succeeded in having placed on the assessment rolls much property heretofore escaping taxation, and have to that extent relieved the honest citizen who by having had all his property assessed has as conscientiously abstained from cheating *all* his neighbor taxpayers as he would refrain from cheating them as individuals in his private dealings. Recent annual meetings of the county boards have quite generally followed the reports made to them by the supervisors in equalizing taxes between the different municipalities.³⁰⁴

Notwithstanding the many acts passed creating a more centralized fiscal authority, the legislature of Wisconsin has not yet established the office of county assessor with deputies. The county supervisor of taxes is simply a small entering wedge toward that end, the actual work of assessing the general property of the State being still in the hands of local officials and therefore subject to the universal defects of administrative decentralization. It may justly be alleged that the Wisconsin revenue system is now efficient only in so far as a unified administration has been created under the authority of the tax commission. Such an administration, however, has not yet been created for the general property tax, and for that reason the commission should not be blamed for conditions which it has not been given power and authority to remedy.

In this connection a member of the present Executive Council of Iowa once suggested to the writer that as great inequality of assessment prevails in Wisconsin as in our own and many other States not having commissions. From what has already been stated it is obvious that the only reply to this contention is that this condition will remain until the present efficient tax commission of that State is supplemented by county assessors and appointed deputies under a more centralized and not a less centralized revenue system. In other words, the Iowa official was in reality making an argument not against a tax commission but in favor of such a body with vastly greater powers than those ordinarily conferred.

These considerations being true, one is not surprised to note that in their report of 1907, and even in the latest report submitted in 1909, the Wisconsin commissioners recognize low and unequal assessments as the logical result of annually elected local assessors who, after ten years of legislation, are still very largely a law unto themselves. By comparing State assessment made on the basis of actual

sales for the period from 1902 to 1906 with local assessments for the same period, the commission found that the former had advanced 36.27 per cent, or an average annual increase of 7.25 per cent, while local assessments had moved forward only 7.67 per cent, or an average of only 1.53 per cent.³⁰⁵

The work which still remains to be accomplished in Wisconsin is apparent from the following statements:

The all-important fact to be deduced from the foregoing is that there has been no substantial improvement in local assessments in the state as a whole since 1902. While the aggregate of such assessments has advanced somewhat, such advance has not been equal or relatively equal to the actual increase within that period in quantity and value of property legally taxable under the general assessment laws. In other words, there has been actual retrogression. And it should be borne in mind that the status in 1902 from which the retrogression has taken place was not one of full compliance with law on the part of local assessors, but one lacking very much of such full compliance; and, further, that the results stated have come about notwithstanding the constant and earnest efforts of the commission, aided very materially by faithful exertions of county supervisors of assessment, to hold local assessing officers to full performance of their duties.

It is not to be understood that there has been no improvement upon the old order of things existing prior to 1900. There has been substantial compliance with law in some assessment districts and very material improvement in some others. It is doubtless the fact that in districts where approximately full valuations have been reached the assessments have been much more nearly equal as between individual property owners and as between different classes of property in the same district. And in some other districts, especially where the county supervisor of assessment has been attentive, there has been some nearer approach to relative equality.

But the fact remains that for the past four years there has been no improvement in the state as a whole, but rather the reverse; that the *average* local assessment of today is not more

than about two-thirds of full value, and omissions or partial omissions and inequalities are the rule rather than the exception, or of very common occurrence at least. With average assessments at two-thirds of true value it must be that in very many districts a very low standard still prevails. It may be doubted whether in the matter of uniformity between assessment districts there has been any material improvement over the old regime, except as between districts within the same county where an efficient supervisor of assessment has been employed.

It is unnecessary here to state or dwell upon the evils resulting from undervaluation in the assessment of property. They have been fully discussed in former reports and do not require repetition. It is desired, however, to point out that the advancement of the standard or basis of assessment from, say, one-third to two-thirds of full value, while indicating progress and some improvement, is very far from success. An assessment at two-thirds of full value, or even at a materially larger fraction of full value, affords to the assessor nearly as much opportunity for partiality, nearly as much cover for carelessness, as an assessment at one-third of full value. The property owner who deems his own assessment relatively too high is just as helpless before the board of review or before the courts in seeking to prove injustice as he would be where the standard is much lower. The truth is — and herein lies the chief difficulty — that where assessments are made at less than full value there is rarely, if ever, any known or acknowledged standard by which the assessor's work may be tested. In such cases the assessor himself rarely attempts to work by any standard having a fixed relation to true values but contents himself quite largely with adopting valuations of a former year comparing one property with another of the same character, etc. Thus, in effect, he employs various sets of valuations for different kinds of property, the result being much the same as if he had consciously fixed a different standard for each kind of property in his district. This does not mean that assessors as a class are less scrupulous than their fellow citizens or more disposed than other men to violate the law. It signifies rather, as indicated in former discussions of the subject, that custom and the known wishes of those to whom they owe their election or appointment to office are gen-

erally of greater potency in controlling their action than the commands of the law and the risk of penalties for its violation.

This brings us to the main question sought to be presented in this chapter. In view of all the efforts made, the results accomplished and not accomplished, in view especially of the seeming retrogression during the last four years, can it be expected that substantial compliance with the assessment laws will be accomplished, can the general property tax system—which so vitally depends upon a just assessment—be other than a humiliating failure, so long as the work of assessment is in the hands of officers who are chosen by and chiefly responsible to the people of the local district in which their duties are to be performed? The commission do not seek at this time to go further than to propound this question. They do not ask or expect any legislation at this time involving any radical change. They expect and intend to continue their efforts to secure observance of the law on the part of local assessors. But they most earnestly desire that the people of the state and their legislative representatives shall give the problem the consideration which its great importance demands, to the end that at some time in the not distant future the proper solution may be embodied in legislation which the public will be ready to receive.³⁰⁶

In their final report for 1909 it is both significant and pathetic to discover that, in comparison with State assessment under the sales method, local assessment for 1907 showed a more deplorable disregard of law than in any previous year. The ratio of assessed to true value for 1907-1908 was as follows: personal property 48.581 per cent; real estate, 65.818 per cent; and all property, 61.806 per cent. In 1903-1904 the ratio had been higher, namely: personal property 56.282 per cent; real estate, 78.727 per cent; and all property, 73.695 per cent.³⁰⁷

The commission is therefore justified in saying that “it is certainly a serious question whether improvement in our assessments is possible under the administration of officials locally elected. The office of assessor requires for its ef-

fective administration a higher capacity than that of any other local official. But in practice it has come to be considered of the least significance."³⁰⁸ In this connection the writer is in full accord with the views of Dr. Raymond V. Phelan when he suggests that a satisfactory administration of the Wisconsin ad valorem system demands expert assessment and that the present tendency toward complete centralized control gives promise of such a system of assessment.³⁰⁹ It is a significant fact that at the present time in determining the general average tax levy, State, county, and local,³¹⁰ the Tax Commission is compelled to ignore the work of local assessors and base the levy on their own assessment made by the sales method. The following table gives a comparison of State and local assessments for the years 1899-1906:

TABLE XXXVII³¹¹

COMPARISON OF STATE AND LOCAL ASSESSMENTS

Year	State Assessment	Per cent Increase	Year	Local Assessment	Per cent Increase	Ratio of Local to State Per cent
1906	\$1,671,142,204	10.42	1905	\$1,169,451,206	1.98	69.98
1905	1,513,335,382	6.37	1904	1,146,813,692	2.40	75.58
1904	1,422,621,485	8.63	1903	1,119,992,057	3.11	78.73
1903	1,309,504,464	6.78	1902	1,086,111,947	23.59	82.94
1902	1,226,376,973	3.37	1901	878,911,348	46.59	71.65
1901	1,186,349,139	135.53	1900	599,540,595	18.41	50.53
1900	503,690,767	.31	1899	528,572,241	1.70	104.92
1899	505,263,975	.....	1898	519,713,002	.....	102.86

Three important facts are apparent from the table: first, the great increase of State assessment for 1901, following the creation of a permanent tax commission; second, the substantial increase of local assessment resulting in a large measure from the efforts of the newly created county supervisor of taxes; and finally, the pathetic failure of local assessment in comparison with State assessment. The experience of Wisconsin during the last decade certainly

furnishes an interesting and striking contrast between efficient State administration and the sham work of local assessors, and indicates with much force what might be accomplished in Iowa with a permanent tax commission aided by county assessors and appointed deputies.

In Minnesota essentially the same conditions prevail from the standpoint of assessment. The commission of that State at once recognized the fact that "the general property tax succeeds or fails with the task of assessment", and further that "in the determination of this tax, the work of assessors and town boards of review is fundamental, for upon them depend proper assessment and the establishment of equality and justice among individual tax payers".³¹²

In their preliminary report great inequalities were found to exist in the assessment of property. The investigation along this line was continued, and in the regular report of the commission submitted in 1908 it appears that an examination of 53,010 sales revealed an actual value of \$98,647,719 for property which had been assessed at \$42,892,017, thus showing a startling ratio of only 43.48 per cent.³¹³ On this point the Commission writes:

In Minnesota for nearly fifty years the mere caprice of the assessor, in which he has been sustained by the boards of review and equalization, has been substituted for the rule of the statute. The result has been what might have been expected, an assessment varying from 20 per cent to 65 per cent of the actual value of real estate and an even larger variation in the case of personal property. The departure from the statutory requirements has been justified on the ground that it made little difference whether you took a percentage of full value or full value itself as the basis of the assessment. Where there is departure from the statute, no definite percentage has been selected and adhered to, so a variation great and far reaching has been introduced in the assessments throughout the state. . . .

The fact remains, however, that an army of assessors, each one a law unto himself, and working on different standards of value,

cannot but produce great inequality of assessment even if the conditions under which he worked were ideal. Ideal conditions do not exist. The assessor in some instances is forced to recognize the political element in making his assessments, to take into consideration the demands for favors from personal friends and political associates, the lack of time, insufficient pay and the real inherent difficulty of the task. It is this last phase of the matter that is the most important and demands the largest consideration. The local assessor system as now organized under the law, while not a failure, will not permit of the kind of assessment that spells efficiency in taxation. The property holdings of individuals and companies extend into many districts of the state, so that the very conditions of competitive business demand equality of assessment, not only between individuals but as between different districts where business enterprises are located that compete with one another. . . .

A careful examination of the situation as it develops during the making of the assessment from the time of the election of the local assessor until the records pass into the custody of the county board of equalization brings the conclusion that the first difficulty is in the conditions surrounding the local assessor. It has already been shown above that the conditions belong to the machinery of assessment now in vogue and cannot be changed except as the method of making the assessment is changed. Fully persuaded of this view, the commission believes that a county assessor should be substituted for the numerous local assessors now engaged in listing the personal and real property in the state for taxation purposes. The first object to be obtained by this change in the system is uniformity of assessment. The impossibility of securing this desirable feature of taxation under existing conditions has been shown in the fifty years of experience in this state with the local assessor system. Here and there under the provisions of section 807, Revised Laws of 1905, four or five county boards have elected supervisors of assessors whose duty it is to aid in locating property not previously listed and to act as the agent of the county board in securing information. While an advance over the old system, the uniformity of assessment is not secured by this additional officer, since the law gives the supervisor practically no power to compel an assessor to follow the law, which is the only basis of a uniform assessment.

The proposal, then, is to turn over the assessment of property in a county to an officer to be known as county assessor, who shall with the aid of his deputies make the assessment for the entire county, barring those cities which have provision for special assessors in their charters. In place of many officers — in round numbers, 2,600 for the state — there will be 85 responsible officers who will give their time and energy for the entire year instead of for a short period of sixty days, to the making of the assessment. On the face of the proposal, better results should be attained.²¹⁴

What reasoning could be more logical and forcible than that of the Minnesota commission? Low and discriminating assessments are the unfortunate conditions, universally acknowledged, the inefficiency of the local assessor being the basic cause, and further administrative centralization through county assessment the remedy presented.

The experience of West Virginia is especially noteworthy from the standpoint of centralized assessment. In 1902 the fiscal administration of that State was in a deplorable condition. The Tax Commission which made its report at that time recognized the gross inequalities of assessment which existed both as between taxing districts and individual property owners, and as a remedy proposed a permanent commission, further suggesting that "it has been thought best to have not more than one assessor in any county of the state". The Commission further declares:

While the greatest hardship resulting from inequality in assessment of property has been felt as between counties in the payment of taxes for State purposes, the attention of the Commission has been called to the fact that great inequality in valuation of the same character of property is sometimes found in different assessment districts of the same county. This is largely owing to the difference in the opinion and judgment of different assessors respecting the valuation of such property.

While under a system which levies taxes on property only for local purposes, the valuation of property, whether high or low, is not so important, yet uniformity in valuation is still of great im-

portance, as well between the sections of a county, as between individual tax payers of the same county. It is also believed that the surest way to reach such uniformity is to have all property assessed at its actual value, if possible, and to reach this end, it has been thought best to have not more than one assessor in any county of the State, but to give him such aid in the way of assistants as may be necessary.³¹⁵

Relative to the proposed office of permanent tax commissioner, the commission says:

We had hoped to be able to suggest improvements in the present system of taxation which would not necessitate or even suggest the creation of any new office. But in the course of our investigation, many things have suggested that one new office should be created in order that some things which are not now provided for may be done, and further that greater efficiency may be obtained in the doing of many things which are now required by law. It is clear that there ought to be some representative of the State, thoroughly acquainted with its system of taxation and of such experience and ability as would enable him from time to time to suggest improvements in the system itself or in its administration; whose authority should be exerted to obtain uniformity in the methods and transactions of the tax officers throughout the State, and who should himself act for the State in making assessments of some kinds of property, the taxes on which are to be paid directly into the State treasury.³¹⁶

This sane, well balanced statement of the legitimate duties of a permanent tax commissioner was destined to bear fruit. The proposal was rejected in 1902, but in 1904 the office was finally created. The commissioner appointed to the position at once began his work in earnest. He was not long in discovering that what is most needed is not more tax laws, but better law enforcement.³¹⁷ Tax laws passed by a legislature elected by the sovereign will of the people were being treated with contempt, according to the commissioner. "When a local assessor", he affirms, "will assess property worth \$1,000,000 at \$50,000, when he knows that such property has recently sold at the former figure — as-

sesses property at one-twentieth its value — it certainly should not take much argument to convince the most skeptical that there should be a supervisory or corrective power vested somewhere, with authority to reassess such property.³¹⁸

Such corrective or supervisory power he proceeded to exercise, and with results which ought to interest the taxpayers of Iowa. The total assessed value of all property of the State of West Virginia in 1904 was only \$277,859,198; and in 1906, due primarily to greater law enforcement, it reached the large sum of \$875,000,000. The total value of both steam and street railways as shown by the assessment for 1904 was only \$30,043,170.92, and \$36,063,848.85 for 1905, as compared with \$176,675,980.74 for 1906.³¹⁹ The same may also be said of intangible property due, first, to better law enforcement, and second, to the obvious fact that the great increase of assessment meant a corresponding reduction of the tax levy.

If more centralized fiscal administration could succeed in increasing threefold the total assessed property of the State of West Virginia and fivefold the assessed value of railroad property, what might a similar plan of reform accomplish for Iowa? A permanent tax commission in Iowa should discover at least a billion dollars of property not at the present time on the assessment roll — which would certainly make such a commission a paying institution from the standpoint of those who are now bearing more than their just share of the public burdens.

A discussion of this phase of the problem might be continued almost indefinitely. Practically every tax commission and all fiscal authorities in the various States have had something to say concerning the subject under consideration.³²⁰ This phase of a reform program may, however, be appropriately concluded by reference to the excellent work of the Kansas Tax Commission, which is especially note-

worthy for the reason that it is a neighboring State where conditions prior to 1907 were the same as still prevail in Iowa.

As already noted Kansas created a permanent tax commission and the county system of assessment in 1907. Up to that time fiscal decentralization prevailed — which meant in that State what it does everywhere, a failure. In fact, conditions became so deplorable that the rapidly increasing tax burden made reform absolutely necessary.³²¹

The admirable work of the Kansas commission and the county assessors may best be judged by comparing the assessments of 1907 and 1908. In 1907 under the old system the assessment was as follows: real estate, \$269,154,500; personal property, \$78,854,269; public service corporation property, \$77,272,445 — thus making a total of \$425,281,214. In 1908 just one year after the commission was created the assessment had increased more than fivefold. The following amounts are worthy of study in connection with present conditions in our own State: real estate, \$1,573,048,790; personal property, \$474,191,255; public service corporation property, \$404,320,352 — making a grand total of \$2,451,560,397.³²² To say the least, this is an object lesson as to the salutary results of legitimate fiscal centralization.

The tax levy has been reduced in a like ratio until at present the maximum levy both State and local, is less than ten mills, a condition which also prevails in West Virginia as the logical result of county assessment and an efficient State Tax Commissioner.

The conclusions reached by the commission in regard to this striking comparison are thus presented in their own words:

1. Assuming that in 1908 real estate was assessed at actual value in money, it follows that the 1907 assessment was made at only 17.11 per cent of such value.
2. The 1907 assessment of personal property is 16.62 per cent.

of the 1908 assessment; but this percentage does not show the share of the tax burden actually borne by the personal property that was listed in 1907. The returns of the assessment of 1907 show that percentages of actual money value, varying greatly among the counties, formed the basis for the assessment of that year. A careful comparison of the values thus derived with the full money value obtained in 1908 produces the reasonable conclusion that new personal property of the value of \$213,591,148, never before on the tax-roll, appears on the roll of 1908. If this amount be deducted from the 1908 personal property amount of \$474,191,255, there remains \$260,600,107, as the actual value of the personalty that was assessed in 1907 at \$78,854,269, and thereby is made clear the fact that the personalty upon the roll of 1907 was in the aggregate assessed at 30.25 per cent. of its actual value.

3. In 1907 the assessment of the property of public-service corporations amounted to 19.11 per cent. of the actual value of that property as found in the assessment of 1908.

The percentage of actual value at which the different classes of property upon the rolls in 1907 was assessed is here re-stated in a form more connected: real estate, 17.11 per cent; personal property, 30.25 per cent; public service corporation property, 19.11 per cent.³²³

It must be apparent even to the superficial reader that equality and uniformity of taxation can be secured only by assessment of property at its actual value. When this rule is ignored, as it is in Iowa and many other States, the result is low discriminating assessments and therefore gross inequalities in taxation. The obvious cause of this unfortunate condition is the local assessor and perfunctory equalization; and the only remedy is a gradual centralization of the machinery of assessment.

TAXATION OF PUBLIC SERVICE CORPORATIONS

In Chapter XXIII a comparative study of the taxation of railway corporations was presented and the strong and weak points of the various systems indicated. An his-

torical analysis of the subject has also been presented, including the taxation of telegraph, telephone, and express companies. Finally, a preference for the ad valorem system and the proper basis of its application have been suggested. It has been alleged, for example, that the present railroad tax law passed in 1872 was the result of a carefully planned compromise between the farmers and the railroads, and that the only method of repealing said law is through a second compromise between the cities, which are now urgently demanding a terminal tax law, and the rural tax districts that have little or no railway mileage and therefore receive no benefit from the present system.

It will be remembered that the compromise which Judge Hubbard so skilfully engineered through the General Assembly was supposed to benefit all the rural districts; but, in fact, it confers special privileges on only a minority of country taxing districts, being at the same time detrimental to the interests of the majority of Iowa taxpayers. These considerations being understood, it follows that the present railway tax law should be reformed primarily from the standpoint of tax distribution.

It has also been suggested that there are two kinds of railroad property, local and non-local. The non-local property includes the main track, right of way, rolling-stock, and franchise or intangible values. The local property includes the side tracks, depots, round-houses, machine shops, real estate used for purposes of operation, and the like, located in the various incorporated towns and cities of the State. When we attempt to localize by law property which is non-local in character, the inevitable result is to impose a burden on the majority for the special benefit of a minority of the rural taxing districts. This is true for the obvious reason that every township must pay freight rates according to its wealth and population whether it happens to have a railroad or not. On the other hand, when the property

of railroads having a local situs is subject to exclusive State taxation the logical result is grave injustice to the cities and incorporated towns of the State. In a word, the local taxation of non-local property and the exclusive State taxation of property having a local habitation are alike contrary to the principles of just and uniform taxation.

A careful study of the different systems of railway taxation now employed in the various States reveals the following facts: first, the great predominance of the ad valorem principle; second, the almost universal adoption of State rather than local assessment; third, State rather than local taxation of franchises, stocks and bonds, gross earnings, and the like, in the cases where there is a departure from the ad valorem principle; and finally, the obvious conclusion that no definite scientific plan of railway tax distribution has been generally adopted. From the latter standpoint it appears that the various States present almost every variety of system ranging from local assessment and taxation on exactly the same basis as the property of individuals to exclusive State assessment and taxation of railroad property.

It is significant, however, to note, first, that many States recognize the non-local character of certain classes of railroad property, and second, that the great majority of States concede the obvious fact that other railroad values have a definite local situs from the standpoint of taxation. But while the principle itself has been established, the exact place where the line should be drawn between local and non-local property has not been scientifically determined. As already noted the historical analysis of the Iowa revenue system throws much light on this particular problem. On the one hand, the comparative study of railway taxation in the various States, and on the other, the historical study of the same subject in Iowa, alike reveal the following essential elements in any just and scientific system of railway taxa-

tion: the ad valorem principle; State assessment; and a line of demarcation between local and non-local values for purposes of taxation.

With the problem thus stated it is apparent that in Iowa two of these essentials already exist. The ad valorem principle prevailed from 1855 to 1862, and again from 1872 to the present time, and in fact has gradually been extended to other public service corporations. While the rural districts in 1872 won a complete victory for ad valorem taxation, the compromise was so adjusted that the railroads demanded and secured State assessment. Under no circumstances would any change in these desirable and well established principles be recommended, save that the actual work of administration should be taken from the Executive Council and placed in the hands of a permanent tax commission.

It follows, therefore, that the one fundamental change of principle to be made at this time in railway taxation is one of tax distribution. The steps in the process of railway taxation would thus include: first, assessment by a tax commission made on the basis of all the elements of value outlined in the present law and any others which from time to time may be adopted by the General Assembly; second, levy of the average tax rate, State, county, and local, on the valuation thus determined, a plan which Iowa followed for many years in the case of telegraph and telephone companies; and finally, the retention of all taxes received from non-local values — right of way, main tracks, rolling-stock, and franchise or intangible values — by the State treasury, and the redistribution of the tax on local values to the cities and incorporated towns of the State where terminal facilities are located. Such a plan of redistribution might easily be worked out on the basis of the side tracks in such incorporated towns and cities. Another and perhaps more practicable method by which the same general results might

be accomplished would be the local taxation of values having a local situs, such taxation to be based upon a separate assessment made by the State board or tax commission. This, which is practically the New Jersey plan, would be a far less radical change from the present system and might therefore make a stronger appeal to the average legislator. It should not be forgotten, however, in this connection that the history of Iowa taxation seems to indicate that the local assessment of railway terminals is neither practicable nor desirable.

Two vital points concerning the plan of reform thus outlined must be obvious to the reader: first, that it is to the interest of a majority of the taxpayers and can therefore be enacted into law; and second, the undoubted constitutionality of the measure. If handled with tact and preceded by a thorough campaign of education, such a plan of reform can hardly fail to be endorsed by the General Assembly. People are not in the habit of voting money out of their own pockets and would, therefore, naturally favor the elimination of any system whereby the majority of rural tax districts indirectly pay the taxes of the minority. When the cities and towns, now justly demanding reform, realize the true condition of affairs, abandon the impossible task of securing a so-called terminal tax law, and endeavor to obtain the same result by a scientific reform of the whole system something worth while will doubtless be accomplished. Under the proposed measure the vote of the rural members of the General Assembly will necessarily be divided — a majority of the same coöperating with the cities and towns or at least a large enough number to secure the desired legislation. When it is no longer possible for the railroads to array the rural districts against the cities the present law enacted in 1872 will be repealed for the reason that a house divided against itself can not stand.

As to the question of constitutionality, it is only necessary to point to the fact that certain adverse decisions of the Supreme Court were based upon the exclusive State taxation of various corporations.³²⁴ The exclusive State taxation of public service corporations is not advocated. In fact such a system as the one now prevailing in Wisconsin is regarded as undesirable and unjust. The able opinions submitted by Judge Deemer are in the main correct, and in no material way do they conflict with the proposed plan of reform. The court merely demanded the local taxation of values having a definite local situs. In as much as the proposed change guarantees this form of taxation, reserving to the State the exclusive right of taxing non-local values, it complies with the decision of the court and is therefore in harmony with Article 8, Section 2, of the Constitution of the State requiring the taxation of the property of certain corporations on the same basis as the property of individuals.

The plan of taxation reform recommended for railroads is also applicable to similar State wide public service corporations. The property of telephone, telegraph, and express companies, palace, buffet, dining car, freight line, and equipment companies, and the like, is of two classes: local and non-local. While the assessment should be made by a tax commission on the same general plan that it is now being made by the Executive Council, the tax on non-local values should be collected and retained by the State and that on local values either collected by local authorities or redistributed to the various districts where said property is situated. A law thus drafted would be in harmony with court decisions and would, therefore, satisfy the demands of the Constitution.

TAXATION OF PERSONAL PROPERTY

In the course of the historical survey of the Iowa revenue

system, it has been pointed out that the alleged failure of the general property tax is the result, first, of decentralized administration, and second, of the fruitless effort to include all forms of personal property. The first cause, in fact, has been considered so important that one chapter has been designated *The Administrative Failure of the General Property Tax*. But, on the other hand, it is equally apparent that the failure of administration is so universal and complete when applied to certain forms of personal property as to suggest at least a partial breakdown in the theory of the tax itself. The question now arises, does the theory of general property taxation apply to personal property — especially those forms of personal property known as moneys and credits?

It must be admitted that on no other question of public finance is the opinion of experts or of the people at large so much divided. Nor has any other question received more attention from tax commissions and writers on taxation in general. The special tax commission of Massachusetts had the following to say in 1907:

Much has been said relative to the taxation of that class of property known as 'intangible'. The beliefs prevailing among thinkers on the subject vary from the position on the one hand that it should be entirely exempt from the burdens of taxation, to the claim on the other that its owner should bear, equally with all others of our citizens, proportionate to the worth of their property and to their ability to pay, the obligation of supporting the Commonwealth and its institutions which all classes equally enjoy.³²⁵

As a matter of fact three distinct solutions of this problem have been advanced: first, the continuation of the present system of general property taxation under a more centralized form of administration; second, the complete exemption of certain forms of personal property; and finally, a compromise plan whereby the personal property tax so-called is repealed and various well defined substitutes provided.

Throughout the United States the first plan is still well nigh universal, at least for most forms of personal property. While this system is condemned on every hand, the majority of taxpayers are opposed to the idea of total exemption and the problem of finding satisfactory substitutes is not a simple one. Despite the fact, however, that personal property taxation is so general and the finding of substitutes a difficult task, the failure of the plan is so evident and so universally acknowledged that only two or three leading authorities along this line need be cited.

The New York Special Tax Commission writes:

The government of the city of New York costs its citizens approximately one hundred and twenty-five million dollars per annum. Of this sum the personal property tax collected from individual citizens of New York city is between two and three million dollars per annum; in other words, the local taxation in New York city has become, in effect, almost an exclusive taxation on real estate. Yet, the personal property tax law is still on the statute books.

The advisory commission on taxation and finances appointed by the Mayor of New York has recently made public its report on personal property taxation. We quote the following passage:

'So far as the personal property tax attempts to reach intangible forms of wealth, its administration is so comical as to have become a by-word. Its practice has come to be merely a requisition by the Board of Assessors upon leading citizens for such donations as the assessors think should be made, and is paid as assessed, or reduced, according as the citizen agrees with the estimate of the assessor. Such a method of collecting revenue, would be a serious menace to democratic institutions, were it not so generally recognized as a howling farce.

But it is not a farce to those who are fully assessed. These are chiefly the widows and orphans, who are caught when their property is listed in the probate court, retail merchants and others, incorporated or unincorporated, with stock of goods, and the small investors who are not skillful enough to make non-taxable investments. The tax of one and one-half per cent. is equivalent to an income tax of twenty-five per cent., on a six per cent. investment.

A general income tax of ten per cent. would create a revolution — yet we take a quarter of their income or more, from the most helpless class of the community.³²⁶

Dealing with the same general question the following statement is made by the Minnesota Commission :

The conclusion to which all of the facts brought forth in the various tables trend is that the burden of the general property tax falls upon the real estate and the familiar every-day classes of property known to every one. The return of moneys to an amount less than four per cent of the deposits in banks is evidence of defects in the law and the method of making assessments. The law fails to distinguish between types and kinds of property, regarding them as alike, whether big or little, and whether income earners or unproductive; the assessment was wrong in method when inaugurated and has steadily grown more unsatisfactory as the machinery of assessment has had to cope with larger and more difficult problems.³²⁷

The condemnation of that fiscal anachronism, the personal property tax, was summarized by the Wisconsin tax commission in 1903 as follows:

(1) Laws requiring the direct taxation of credits as property without corresponding reduction in the assessment of the property of debtors necessarily result in duplication of values and double taxation, and cannot fail to produce inequality and injustice, so far as such laws may be enforced.

(2) Such laws are incapable of enforcement, except partially.

(3) When partially enforced, the injustice to those who are taxed is much greater than if all credits were taxed alike; and this whether the burden is borne by the few who are taxed or is shifted to their debtors.

(4) Incidentally, the deceptions and other practices resorted to in evading the attempted enforcement of such laws have a degrading moral effect in the community.

(5) Laws permitting the amount of credits assessed to be deducted from the valuation of the property of debtors do away with

the evil of double taxation and for that reason are infinitely preferable to laws which do not permit such deduction.

(6) But under laws permitting such deductions the tax imposed upon the creditor is ordinarily shifted to the debtor in the form of higher interest or otherwise, with something added to cover the creditor's risk.

(7) Laws designed to prevent such shifting are impracticable and serve to injure rather than to benefit the debtor, the only person for whose protection they are intended.³²⁸

Of all the States of the Union perhaps none has made a greater effort to enforce the personal property tax than Ohio. The Massachusetts Tax Commission of 1907 had this to say about the Ohio laws:

It will be seen that the law makers of Ohio have about exhausted human ingenuity in inventing drastic methods of securing the disclosure of personal property. The only known expedient which they seem to have overlooked is the use of torture, which was employed in the Roman Empire to force reluctant tax payers to disclose their personal estates. What has been the result of the drastic measures which Ohio has seen fit to employ? From the reports of the State Auditor we learn that in 1870 personal property, including, according to the Ohio classification, the property of railroads and some other corporations, amounted to 38 per cent of the total property assessed for taxation; in 1905 it amounted to 31 per cent; so that in Ohio, as elsewhere, an increasing proportion of the burden of taxation has fallen upon real estate.³²⁹ The experience of that State is therefore particularly interesting and instructive. A tax inquisitor law was passed in 1888.³³⁰ Yet after years of persistent effort to enforce the full listing of personal property, Professor M. B. Hammond of the University of Ohio writes that "Some twenty-three years ago it was believed by many that the failure to list more of the intangible property was due to the careless assessment of the local assessors, and the auditors of the various counties were allowed to enter into contracts with certain private citizens usually known as tax inquisitors, whereby these men were allowed a certain percentage, usually 25 per cent., of all taxes collected from property discovered by them which had es-

caped assessment. After nine years of the operation of this law the tax commission of 1893 discovered that through the operation of this law the amount of property added to the tax duplicate had been increased by *about two per cent.*, but that its collection cost the state *34 per cent. of the amount secured*, and that nearly all of the increase came from the country counties which were already bearing more than their fair share of the state taxes."³³¹

The following statement of the Kansas commission will appropriately conclude the phase of the problem now under consideration:

That there has been everywhere a failure in attempts to administer the system which requires an *ad valorem* tax upon a uniform assessment of all classes of property must be admitted. The system seems to be entirely out of harmony with modern economic conditions. It may have answered very well when it was first conceived and adopted, centuries ago, under the then conditions of the old-world civilization, but the method has gradually fallen into disuse abroad until now it has been practically abandoned as a main source of revenue in all European countries, except in Switzerland, and there it is supplemented by an income tax. Established in America in the seventeenth century by the early settlers, the system has been administered with a continuous decline in effectiveness, caused by the increasing diversification of property interests, and especially by the rapid increase in the forms of intangible property, until, as has been said before, the plan is condemned in most American States. In some states changes for the better have been made, and in others like changes are under consideration.³³²

The defects of personal property taxation are so universal and have so long been obvious to all thinking men that many well meaning people have gone to the opposite extreme and advocated the total exemption of this class of property. This is the second solution noted above. For example Idaho exempts mortgages, heirs, and the like, from all taxation. To some extent this policy is also followed in Indiana, Maryland, and Washington.³³³ It may be af-

firmed, however, that such an extreme program of reform has not, for good reasons, gained a strong foothold in many of the States. While most European countries have long since abandoned the personal property tax, it should be remembered that they have gradually substituted other and more scientific forms of taxation. We refer to income taxes, inheritance taxes, habitation and business taxes, and the like. Profiting by their experience it may be safely alleged that while our own personal property tax is a fiscal sham and ought to be abandoned, some constructive legislation must be formulated if we are to have a just and equitable system of taxation. This brings us to the third alternative — the evolution of desirable substitutes for the personal property tax.

The movement along this line is quite recent in character and has made rather more progress in Canada than in the United States. It has been an unconscious, practical development rather than the result of preconceived fiscal theories. For years Pennsylvania has had a flat rate of four mills on certain credits including real estate mortgages. Alabama, New York, Virginia, and Minnesota employ mortgage recording taxes; and a number of Canadian provinces are developing business or rental taxes. In Appendix D the reader will find special material dealing with the problem of substitutes for the personal property tax.

Before outlining any plan of reform for Iowa, however, attention should be called to a number of leading tax commission reports dealing with the compromise plan of reform. The Kansas commission has this to say:

The Commission unhesitatingly expresses the opinion that the present system should be so changed as to permit a classification of personal property, in order that when found necessary and expedient special differentiated rates may be laid upon different kinds of property. It is not proposed at this time to recommend particular laws that may be necessary to provide for the just taxation

of all the different classes of property, for the reason that there is possibly some doubt as to the legislature having constitutional authority to make a classification. But in the opinion of the Commission a law should be passed which will test that question, and in any event it is believed wise, as a proper preliminary to any extended legislation in the direction sought, to remove any possible constitutional limitations upon the legislative authority.³³⁴

In Minnesota where the mortgage registry tax prevails, the commission has the following recommendation to make:

The agitation for some special tax upon credits in place of the present provisions of the personal property tax was recognized in the last legislature by the passage of the mortgage registry tax law. This, however, is but a step in the right direction. By taxing intangible properties such as moneys, securities, unsecured credits and the like, at a low flat rate of three or four mills, the commission is confident a much larger revenue could be secured than is now obtained under existing laws. This proposal is treated at length in chapter III of part I and is worthy, the commission thinks, of most careful consideration.³³⁵

In connection with the four mill tax of Pennsylvania, which is a substitute for the personal property tax on practically all credits, the same commission says:

Between the two positions described above is a third, which recognized something of the contention of both by taking what is essentially a compromise position. Income, rather than the value of what is taxed, is the keynote to the third view of the personal property tax. The procedure from this view point is, briefly: to exempt from taxation some tangible property in the form of household goods, live stock and mechanics' tools, and to place upon credits, stocks, bonds, moneys, mortgages and promissory notes a moderate tax which will not be confiscatory, but eminently fair. . . .

The rates of both laws are too high to produce the best results. In Pennsylvania the rate is 4 mills, in Maryland, 4.6 mills. According to the Massachusetts commission, better results would be obtained by a 3 mill rate than by the higher ones used in Pennsylvania and Maryland. When compared with incomes of 4, 5

and 6 per cent, the 3 mill rate bears the relation of 8, 6 and 5 per cent, which is all the tax a property of any kind ought to bear.³³⁶

The recent tax commission report of Delaware has the following to say concerning the business tax law of Ontario:

In 1904 the Legislative Body of the Province of Ontario in an Act respecting municipal taxation, adopted the assessed value of the real estate occupied in business and in the professions, as the basis for their business assessment and taxation. See Statute of Ontario, 1904, Ch. 23, Sec. 10, and Same, 1901, Ch. 36. Under this law almost every trade, business and profession, conducted in a municipality, is made taxable for municipal purposes on some percentage of the value of real estate occupied, at the rate imposed on taxable real estate and incomes. This percentage varies in different trades or vocations. The advantages of such a plan are obvious. The basis of the tax is certain and easily ascertainable. With us the county assessment could be used for this purpose. Where the taxable was a renter of part only of the premises assessed, the rent paid could be capitalized at a certain percentage so as to ascertain the base. No inquisition is necessary. No oath is required. It is not free from objection. No tax law is. The objections, however, seem less numerous and less serious than those which may be made against any other scheme yet devised for a business or occupation tax. The desired end in all taxation of this character, is to reach the income, that is, the ability of the taxable, and the great aim is to make the tax relatively fair among those engaged in the same vocation. It is true, of course, that the Ontario plan does not offer a perfect index to income, nor does it grade the tax equally in all cases among taxables of the same class. It would be easy to give various illustrations of its failure in both of these regards. Nevertheless the scheme is receiving the indorsement of a great number of economists and students of taxation.³³⁷

Finally, the tax commission reports of Massachusetts submitted in 1907 and 1909, respectively, are worthy of careful study in connection with the personal property tax. In 1907 the special commission said:

To increase the revenue of the Commonwealth, your committee recommends the imposition of the so-called direct inheritance tax, the stock transfer tax and an excise tax upon express companies; an increase of the excise tax upon foreign corporations, an increase of the organization fees of domestic corporations, and the retention by the Commonwealth of that part of the corporate franchise taxes of railroads, telegraph and telephone companies which is now distributed to the cities and towns of the State.³³⁸

Concerning the policy of exemption the same commission wrote:

To exempt suddenly this class of property from all local taxation, without other changes in our fiscal legislation, would put an increased burden upon real estate, and would bring to many cities and towns serious financial embarrassment. The problem is, to find other sources of income and to rearrange our present revenue and expenses. Such legislation as we have suggested should be enacted only after the most careful and exhaustive investigation as to its effect upon the revenue of each city and town, and should be accompanied by other changes in the taxation system of the Commonwealth by which the new order of things could be made to apply with a minimum of temporary embarrassment.³³⁹

Accompanying these suggestions was a recommendation of the Massachusetts commission in favor of a constitutional amendment to permit the classification of property for purposes of taxation. The principal reason, however, for proposing the amendment was to enact a law providing for a three mill tax modelled after the Pennsylvania system; but the commission which reported in 1909 was more conservative than that of 1907, and, therefore, while admitting grave evils in the existing system, declined to recommend the adoption of the amendment.³⁴⁰

An examination of the reasons given for this action is sufficient proof of the narrow and somewhat antiquated views of taxation held by members of the commission, and also reveals the fact that local conditions were a large factor

in determining their judgment. It should be remembered that real estate mortgages and stocks of domestic corporations in the hands of holders are now exempt from direct taxation under the Massachusetts law. Accordingly, when the three mill tax on stocks and bonds in general was proposed the opposition very naturally alleged that it would lower the value of stocks in Massachusetts, injure the development of real estate in Boston by drawing capital into other fields of investment — purely a selfish local argument — and finally, “would tend to advance the rate of mortgage interest, by giving capital which is now thrown largely into this field of investment, under the exemption of mortgages from taxation, and inviting opportunity to buy practically tax-exempt foreign securities”.³⁴¹

It was further argued that revenues would be reduced and that the majority of State constitutions did not provide for the proposed classification of property. On the whole this reactionary report is valuable chiefly as evidence of the manifold difficulties that beset the real tax reformer. For example, after much deliberation the commission reaching the following brilliant conclusion :

It is pertinent in this connection to call attention to the fact that only a minority of the American States have constitutional provisions that permit the classification of property for purposes of taxation. Only ten States never have had any restrictions upon classification in the constitution; four other States have repealed such restrictions originally put into the constitution. It thus appears that thirty-two States have so far retained in their constitutions provisions that limit the power of the Legislature with respect to the classification of property. The general practice of American States is strongly on the side of the retention of the word ‘proportional’ in the Constitution of this Commonwealth.³⁴²

Compare this statement with the following resolution, unanimously adopted by the International Tax Association in 1907 :

Resolved, That all state constitutions requiring the same taxation of all property, or otherwise imposing restraints upon the reasonable classification of property, should be amended by the repeal of such restrictive provisions.⁸⁴⁸

Having examined somewhat in detail the personal property tax of Iowa and presented the experience of some of the other States, including certain provinces of Canada, we are now in a position to interpret the evidence thus obtained, or in other words, to outline a possible plan of reform. Two things are obvious concerning such a plan: first, it must conform to the general scheme of scientific tax legislation; and second, it should be based as far as practicable upon historical facts and local conditions. While the general principles of tax reform are much the same in all States, the way in which these principles should be worked out will be largely determined by environment and an appeal to the actual facts of history.

It is believed that the so-called personal property tax of Iowa should be abolished and desirable substitutes provided — but only under the following conditions and limitations:

1. In those State wide public service corporations where the ad valorem system prevails it has already been suggested that stocks and bonds may properly form one of the elements of valuation. Indeed, they are now considered in the assessment of telephone, telegraph, and express companies. This being true, no reason exists for the separate taxation of such stocks and bonds in the hands of individuals, provided the railroad or other similar corporation has already been assessed and taxed as high as the property of individuals. In case a railroad corporation is not bearing its full share of the public burdens, the assessment should be increased until that point is reached, but no reason exists for complicating the system by placing a supplementary tax on stocks and bonds thereby discriminating

against home investors. For all corporations where State assessment and the ad valorem principle are employed, stocks and bonds should be used as elements in determining the assessed value of the property, but should under no condition form a separate and distinct basis of taxation. Nor does this mean anything more than a nominal exemption of this class of property for the obvious reason that the corporation itself has already been assessed and taxed as high as the property of individuals.

These considerations ought to be self-evident. It may not be superfluous, however, to remind the reader that the general plan of reform thus indicated practically eliminates a large class of personal property by merging the same in the ad valorem system under State assessment. All corporations organized for pecuniary profit should be required to pay their full quota of taxes; but when this is done individual holders of securities should not be required to assume an additional burden merely to satisfy a legal fiction. Should the principles herein outlined be followed it will materially limit the field of personal property taxation and thereby simplify the problem.

2. In the second place it is believed that a just and practicable substitute for another part of the personal property tax has been found in the business or rental taxes of Canada. These taxes are worthy of careful study, and for that reason important material relative thereto has been included in Appendix D. The Canadian business tax has passed the experimental stage and represents a substantial improvement over the system now prevailing in Iowa.

3. Finally, real estate mortgages, moneys, unrecorded credits, in fact all credit instruments not otherwise provided for, might very properly be taxed a flat rate of three or four mills according to the Pennsylvania plan. Mention is made of this rate because it represents a substantial if not a high income tax. In this connection it is assumed

that the present personal property tax, whereby savings bank deposits, if listed, would pay an income tax of fifty per cent or more in the average city of Iowa, is not an example of taxation but of the confiscation of property. Personal property is reached by an income tax in most European states, but the writer has not learned of a case where it is the custom to demand half the income of a taxpayer.

Endorsement of the Pennsylvania flat rate is not made without a careful consideration of the mortgage registry tax of New York and Minnesota and also of the taxation of mortgages as an interest in real estate — the Wisconsin plan. As to the latter it is merely an indirect method of exempting mortgages from taxation and is so regarded wherever the experiment has been tried.³⁴⁴ The history of our revenue system proves that the people of Iowa have always believed that land together with the improvements thereon is a logical and proper subject of taxation. In fact this principle was written into law during the Territorial period and has not been repealed; but this desirable result can be realized by efficient administration without the aid of artificial devices. So-called taxation of mortgages as an interest in real estate is a mere fiat of law, or in other words, a statutory subterfuge. It merely represents the taxation of real estate at its actual value, a result which can be accomplished in only one way — by efficient centralized assessment. If the plan is to exempt mortgages from taxation, that should be done by direct methods and not through any particular scheme for the assessment of real estate.

As to the mortgage registry tax it is believed that a flat rate of three or four mills accomplishes the same results by a more certain and definite plan and that without discriminating against other forms of credit. The effects of such discrimination are sufficiently obvious in Wisconsin and were, indeed, a large factor in determining the char-

acter of the report submitted by the Massachusetts commission in 1909. Finally, the Pennsylvania system commends itself as a form of income taxation, just and equitable, and at the same time one which can be efficiently administered.³⁴⁵

INHERITANCE TAXATION

As already suggested inheritance taxation is in harmony with every canon of a just and well balanced revenue system. While common to all forms of government it seems to be especially adapted to the ideals of democratic institutions. Based as it is upon various theories and supported by numerous arguments this tax has found a place in the budgets of practically all the leading nations and three-fourths of the American States. We are disposed, however, to regard inheritance taxation, not with Andrew Carnegie as a method of reducing swollen fortunes,³⁴⁶ but with Professor Charles J. Bullock when he supports the measure from the standpoint of raising revenue in the following terms:

In considering the proper function of the inheritance tax we are brought directly to the question whether it should be employed solely for the purpose of raising revenue, or should be used as a means of regulating the distribution of wealth. In the laws now on the statute books of the several States the controlling purpose is, clearly, to raise revenue. Upon direct inheritances the rates are usually from 1 to 3 per cent, and in no case exceed 5 per cent; while upon collateral they seldom rise above 6 per cent. These figures are not higher than can be justified on purely financial grounds; in fact, in many States the rates are less than the experience of other countries shows that the legislature might well impose. They yield considerable revenue which can be collected with reasonable certainty, slight expense and comparatively little hardship to taxpayers. Upon estates of the largest size passing to distant heirs or strangers in blood, the tax sometimes rises to 15 or 20 per cent; but occasion seldom offers for the application of such high

rates, and even then the limits set by sound principles of finance are not over-stepped. A tax of 20 per cent upon property in excess of \$500,000 passing to unknown relatives or strangers in blood, may appear startling at first thought, yet it may be defensible from the purely fiscal point of view, and will exert little influence upon the distribution of wealth in the United States. Upon most inheritances, collateral as well as direct, we are now levying from 1 to 5 per cent. On the theory that the purpose of the laws is to raise revenue these rates can be readily understood; they are altogether ridiculous, if we assume that the purpose is to modify perceptibly the distribution of wealth.²⁴⁷

The Minnesota Tax Commission in its report for 1908 has made a careful study of the general subject of inheritance taxation. By consulting this valuable report the reader will find elaborate tables showing inheritance tax rates and exemptions for certain European countries, the United Kingdom, Australasia, and the Canadian Provinces. Similar data is also given for the American States.

It will be noted from a study of these tables that thirty-seven out of a total of forty-six States have the inheritance tax in some form and that twenty-two States impose a tax on direct as well as collateral heirs. Aside from the discrimination in Iowa against residents of foreign countries, it appears that the maximum rate on collateral heirs is fifteen per cent, and on direct heirs five per cent. In all but three of the States the total amount of the tax is paid into the State treasury. In Ohio seventy-five per cent is received by the State; in Montana, sixty per cent; and finally, in Louisiana the parishes are the recipients of the tax. From the standpoint of tax receipts New York heads the list in 1907 with \$5,435,394; Pennsylvania, \$1,379,092; Massachusetts, \$772,499; California, \$740,940; and Wisconsin, \$396,458.

Comparing the system in California and Wisconsin with the proposed law of New York, it appears that the former

provides five classes from the standpoint of relationship and the latter only three. In Wisconsin and California the primary rates on an individual inheritance of \$25,000, after deducting the exemptions, are fixed at one, one and one-half, three, four, and five per cent respectively. In the remaining classes the rates are as follows: second class, one and one-half times the primary rate; third class, twice the primary rate; fourth class, two and one-half times the primary rate; and fifth class, three times the primary rate—thus making a maximum rate of fifteen per cent on the excess of an individual inheritance above \$500,000 passing to the fifth degree of relationship. The primary rates under the proposed New York law are fixed at one, three, and five per cent on the basis of the three degrees of relationship. The rates for the following classes are two, three, four, and five times the primary rates, thus making a maximum rate of twenty-five per cent on the excess of an individual inheritance above \$1,000,000 passing to a remote relative, corporation, or stranger in blood. The Wisconsin and California laws, it will be noted, have twenty-five distinct rates, while the proposed New York law has only fifteen, a decided advantage in simplicity of administration due to the very proper recognition of only three degrees of relationship. Largely for this reason one is inclined to confirm the judgment of the Minnesota Commission made in the following terms:

The commission believe that the Wisconsin law so far as the amount fixed for each class is concerned, is preferable to the New York plan but in all other respects they prefer the law prepared by the New York Commission because it is less complex and on the whole as equitable.³⁴⁸

In regard to the situation in Iowa, from the standpoint of inheritance taxation, it would seem that two distinct plans of reform are possible: first, the present collateral tax on the estate as a whole may be retained and perfected,

and a separate law enacted providing for the taxation of individual shares passing to direct heirs; or second, the whole system may be changed to the plan of taxing individual shares. From the standpoint of justice and equity the following statement of the Massachusetts Commission is commendable:

The committee has been insistent in its belief that the share of beneficiary, whether consisting of realty or personalty, is the only fair basis for taxation of inheritances and successions. With the estate the basis, and a \$10,000 exemption, a \$9,000 legacy of an \$11,000 estate, or of any larger estate, is subject to a tax, while a \$9,000 legacy of a \$10,000 estate escapes altogether. Massachusetts, having first taken the value of the estate as the basis of the tax, after a ten years' trial abandoned the same and adopted the share basis. We are convinced of the wisdom of this change.

In order that rulings and court findings and constructions may remain intact, the act presented is patterned as nearly as may be after the present collateral tax law. Shares of strangers and remote kinsmen are taxed 5 per cent., as heretofore. Three classes of beneficiaries are presented, 'Class A' embracing the exempted class of the present law save brothers and sisters. This class is subjected to a graduated tax of from 1 to 5 per cent, based upon the value of the share, with a \$10,000 exemption to husband, wife, father, mother, child and adopted child. 'Class B', embracing brother, sister, nephew, niece, is an innovation to our present law. Brothers and sisters in the present law are classed with children, whereas nephews and nieces are rated as strangers. While the committee has been unwilling to treat brothers and sisters in the same favored class with lineals, it has also been reluctant to regard them as strangers. A midway class is therefore suggested, with graduated rate of from 3 to 5 per cent. We believe such class has much to recommend it. Three taxable classes do not make the law cumbersome; the U. S. law had five.²⁴⁹

A similar judgment is rendered by the New York Commission in these words:

It seems to your Commission that it would be fairer to make at

least three rates; a minimum rate of, say, one per cent. for the immediate family—that is, the same persons who pay the minimum rate under the present law—a rate of three per cent. for the nearer relatives beyond the immediate family, such as the lineal descendants of brothers and sisters, uncles and aunts and first cousins; and a third rate of five per cent. for more distant relatives and strangers. . . .

Before deciding upon the rate of graduation, however, we must decide on the method. This involves the question as to whether the tax is to be levied and computed upon the entire estate transferred, as is the plan of the present New York law; or upon the individual's share coming to the recipient, which is the plan adopted by the more modern statutes of Wisconsin and California. The only substantial reason for assessing and computing the tax upon the entire estate, rather than upon the individual share received, is that greater revenue is thereby produced. We think, however, that this objection to taxing the individual share received can be overcome by so arranging the rates and percentages as to produce equally good results. On the other hand, reasons of fairness and justice, as well as sound theory, are on the side of the assessment and computation of the tax upon the individual share received. For recipients who belong to precisely the same class and receive precisely the same amount it will thereby in all cases pay precisely the same tax; whereas, if the percentage of tax were determined by the size of the estate, one of such a class might be compelled to pay far more than another.³⁵⁰

In considering any plan of reform for Iowa, however, we should bear in mind that we have had a flat collateral tax on the estate as a whole for a period of fifteen years. This tax is reasonably just and equitable, can be made much more productive with the aid of a centralized administration, and has been upheld by the courts. The repeal of what has already been gained, without serious thought and careful investigation, would be a plan of doubtful expediency. An inheritance tax on individual shares passing to direct heirs can and perhaps should be obtained by the

enactment of a separate law. This in fact was the plan of the Gilliland bill introduced at the last session of the General Assembly.

MISCELLANEOUS PROBLEMS

Among the remaining fiscal problems which merit a word of attention one of the most important is that of the taxation of insurance companies, especially life insurance companies. The following table gives a statement of the methods followed in 1871 and 1908 for the various States of the Union:

TABLE XXXVIII³⁵¹

RATES OF TAXATION IMPOSED BY THE SEVERAL STATES AND TERRITORIES OF THE UNITED STATES UPON FOREIGN LIFE INSURANCE COMPANIES UNDER LAWS IN EFFECT ON DECEMBER 1, 1908, COMPARED WITH THE RATES IMPOSED IN 1871

	1871*	1908
ALASKA.....		No tax.
ALABAMA.....	2% and local.....	2% on gross premiums and local premium tax in two cities.
ARIZONA.....	Nothing.....	2% on gross premiums.
ARKANSAS.....	Local.....	2½% on premiums less policy claims, including death losses, endowments and commissions.
CALIFORNIA.....	1%.....	1% on gross premiums.
COLORADO.....	1% and local.....	2% on gross premiums.
CONNECTICUT.....	2%.....	Reciprocal tax only.
DELAWARE.....	2½%.....	2% on gross premiums.
D. OF COLUMBIA...	1%.....	1½% on premiums less dividends.
FLORIDA.....	Nothing.....	2% on gross premiums.
GEORGIA.....	1% and local.....	1% on gross premiums and local tax in four cities.
HAWAII.....	Nothing.....	2% on premiums less return premiums, reinsurance, death losses, all other payments to policyholders and actual operating and business expenses.
IDAHO.....	Nothing.....	2% on premiums less policy claims.

*The data with regard to the year 1871 is taken from the proceedings of the first annual meeting of the National Convention of Insurance Commissioners.

TABLE XXXVIII — Continued

	1871	1908
ILLINOIS.....	Reciprocal.....	Reciprocal tax only.
INDIANA.....	Nothing.....	3% on premiums less death losses only.
IOWA.....	Reciprocal.....	2½% on gross premiums.
KANSAS.....	2%.....	2% on gross premiums.
KENTUCKY.....	2½%.....	2% on gross premiums and local tax in two cities.
LOUISIANA.....	1%.....	6-10% (about) graded license tax based on gross premiums, this tax being duplicated in City of New Orleans.
MAINE.....	Nothing.....	1½% on gross premiums.
MARYLAND.....	Nothing.....	1½% on gross premiums.
MASSACHUSETTS..	Reciprocal.....	¼% on reserves.
MICHIGAN.....	3% and local....	2% on gross premiums.
MINNESOTA.....	2%.....	2% on gross premiums.
MISSISSIPPI.....	Nothing.....	2% on first year gross premiums and 1-10% on renewals since '02.
MISSOURI.....	Reciprocal.....	2% on gross premiums.
MONTANA.....	Nothing.....	2½% gross on first \$5,000 of premiums; 2% on balance; and local county taxes.
NEBRASKA.....	Local.....	2% on gross premiums.
NEVADA.....	1%.....	No tax on premiums or reserves.
NEW HAMPSHIRE..	1%.....	1% on gross premiums.
NEW JERSEY.....	Reciprocal.....	Reciprocal tax only.
NEW MEXICO.....	Nothing.....	2% on gross premiums.
NEW YORK.....	Nothing.....	1% on gross premiums.
NORTH CAROLINA..	1% gr. and local.	2½% on gross premiums.
NORTH DAKOTA...	Nothing.....	2½% on gross premiums.
OHIO.....	2%.....	2½% on gross premiums.
OKLAHOMA.....	Nothing.....	2% on gross premiums and local.
OREGON.....	Nothing.....	2% on premiums, less policy claims.
PENNSYLVANIA....	3%.....	2% on gross premiums.
RHODE ISLAND....	2%.....	2% on gross premiums.
SOUTH CAROLINA..	Nothing.....	1½% on gross premiums, and local, county and municipal taxes.
SOUTH DAKOTA...	Nothing.....	2½% on gross premiums.
TENNESSEE.....	1½% and local...	2½% on premiums less dividends to pay premiums.
TEXAS.....	Nothing.....	1% on gross premiums to companies complying with Robertson law; 3% on gross premiums to companies NOT complying with the Robertson law.
UTAH.....	Nothing.....	1½% on premiums less State taxes on property.

TABLE XXXVIII — Continued

	1871	1906
VERMONT.....	Reciprocal.....	2% on premiums less dividends, reinsurance and return premiums.
VIRGINIA.....	2%.....	1% on gross premiums, plus 1-10% toward expenses of insurance department and local tax in one city.
WASHINGTON.....	Nothing.....	2% on premiums less amount paid policyholders as returned premiums (not including annuities, annual dividends, endowments or losses paid).
WEST VIRGINIA....	3%.....	2% on gross premiums.
WISCONSIN.....	Nothing.....	Reciprocal tax only.
WYOMING.....	Local.....	2½% on gross premiums.

A study of the table reveals the fact that the large majority of States have an income tax on gross premiums. This is true it appears in about two-thirds of the States. When we add to this list, however, other States like Arkansas, Idaho, Indiana, Oregon, and Tennessee, which impose an income tax on gross premiums after making certain deductions we have included practically all the States. Massachusetts stands alone with a one-fourth per cent tax on reserves. Connecticut, Illinois, New Jersey, and Wisconsin have reciprocal taxes only, which means that when taxes are paid they are based for the most part on gross premiums. When we consider that in addition to the taxes thus imposed upon foreign life insurance companies, such corporations are also required to pay numerous fees and the same rate on their real estate as is levied upon individuals, the reader can form some definite opinion of the chaos and discrimination which prevails in this part of our fiscal system.

Space will not permit any detailed examination of the arguments for and against the various systems of taxing insurance companies. In addition to the fees exacted by the different States, insurance companies may be taxed on their gross premiums, net premiums, reserves, assets, real estate, dividends, or any combination of these elements.

Whatever the tax imposed, two things are clear: first, that a uniform system should prevail throughout the United States, or in other words, that discriminating and retaliatory legislation should be prohibited; and second, that taxation in all its forms is merely one element in the cost of insurance, and therefore in the last analysis is almost universally paid by the policy-holder, either in reduced dividends or increased premiums. It is believed that these propositions are generally conceded by fiscal authorities.

As to proposed reforms in Iowa the reader will recall that the General Assembly has been guilty of discrimination and retaliation. No reason exists for this class of legislation and no good result has ever followed its enactment. The principles of inter-state comity in taxation, unanimously endorsed by the International Tax Association, demand the repeal of all laws imposing heavier burdens upon foreign than upon domestic insurance companies. From a legal standpoint we recognize that a State has the right to discriminate against foreign companies by levying a license tax on their right to do business. The writer, however, is convinced that this is at least one case where that which is legal is neither expedient nor desirable. When the States come generally to recognize the folly of discrimination, a great step forward will have been taken both in the science and art of public finance.

Regarding the advisability of a tax on gross premiums, it should be remembered that, while such a tax is in reality levied on the amount of business transacted, it is legally a license tax and should be so regarded by both theorists and practical administrators. This being true the question is, what plan should be used in measuring the value of the right to do this class of business? One is inclined to favor net rather than gross income as a method of estimating the value of the right to transact insurance business in a certain State. At least it would seem equitable and

just to deduct death losses from gross premiums and perhaps other obligations paid annually under the policy contract before levying the tax.

In conclusion it may be suggested that the possible retention of certain fees now commonly collected in the various States, the taxation of the home office and other real estate where located on the same basis as the property of individuals, and finally the levy of a license tax measured preferably by net income (but if this is objectionable by gross premiums after deducting the payment of death claims) ought to be enough taxes to satisfy every one except possibly the political agitator. Any system, however, which may be devised ought to recognize the well defined principles of inter-state comity in taxation.

The taxation of banking associations does not require any detailed consideration at this time. Under the Iowa law as interpreted by recent court decisions chartered institutions are taxed on their capital stock surplus and undivided profits. The acknowledged success of this law is no fault of the local assessor. The nature of the banking business is such that the assessment is practically determined by the statute itself and therefore, while somewhat fixed and arbitrary, it is a real assessment. It is indeed a strange and pathetic comment on our local assessors that in about the only place where the personal property tax is a success — the taxation of banking associations — the law has practically eliminated them by making their functions nominal. In other words, banks are assessed by the statute and not by the caprice of an assessor, which explains why they are actually paying a personal property tax.

Two suggestions may be offered in connection with the taxation of this class of corporations: first, that when the capital stock is made a part of the assessment no reason exists for the separate taxation of shares in the hands of the individual stockholders, the idea that such shares are

property other and different from the capital stock itself being a pure legal fiction; and second, the success of rather fixed and arbitrary methods of assessment would tend to confirm the wisdom of dealing in a similar way as far as practicable with certain other classes of personal property. In a word, it is desired to emphasize the fact that the unusual success of bank taxation in Iowa is a strong and logical argument in favor of the Pennsylvania flat rate on credits and the business or rental taxes of Canada as desirable substitutes for the personal property tax.

This chapter would not be complete without at least a passing reference to the so-called principle of the separation of revenue sources. As a general principle of tax reform we are unable to endorse the favorable views held by an economist like Professor Seligman and also expressed by a number of recent tax commissions.³⁵² The criticisms and suggestions of Professor T. S. Adams appear to be well founded.³⁵³ As a fundamental principle, the history of the Iowa revenue system and the experience of many other States proves that segregation as frequently advanced is open to the following serious objections: first, the avenue of true reform is along the line of administrative centralization now being worked out in Wisconsin, Minnesota, and Kansas and not decentralization as proposed by recent constitutional amendments in Missouri and California, which were fortunately voted down by the people; second, the separation of revenue sources, logically assumes a certain measure of so-called "home rule" in taxation, which is in every way a step backward in both the science and art of public finance; third, the exclusive State taxation of values having a local situs does the same violence to all rules of uniformity and equality as the local taxation of State wide property, a fact which heretofore has been ignored by the advocates of separation; fourth, separate sources of revenue for the local units will tend to destroy the interest

of the average taxpayer in the expenditures of the State government and may open the door to more class politics and perhaps result in discriminating taxes upon certain public service corporations;³⁵⁴ and finally, no arbitrary line can be drawn by the mere fiat of law between the needs of the State and those of the local units and therefore the revenues which supply such needs ought to be mutually supplementary if we ever hope to realize a uniform and elastic system of taxation. Other arguments have been mentioned and might be repeated here. When one pauses, however, to consider the failure of the local assessor, on the one hand, and the fact that local revenues are more than ten times as large as State revenues, on the other, it does not require a high order of discernment to understand that so-called "home rule" in taxation is not only a false alarm, but is positively a dangerous and reactionary policy which ought not to be adopted by any State.

CONCLUSION

In conclusion it is perhaps superfluous to suggest that the program of reform herein outlined can not be realized in one session of the General Assembly. Nor can any substantial part of it be enacted into law during so short a time. All laws of a general nature and for the benefit of the people at large must come, if they come at all, as the result of an educated public sentiment.³⁵⁵ Tax laws are among the best examples of this class. Any important reform of our revenue system must be preceded by a thorough campaign of education conducted along right lines and managed with tact, courage, and great force.

No reformer is beset with greater difficulties than the man who honestly endeavors to compel every person to pay his just share of the burdens of government. This has always been true and will be true for generations to come, for the obvious reason that thousands of our best and most in-

fluent citizens, who gladly pay their pew rent, store bills, doctor bills, and the like, will perjure themselves rather than pay the greatest of all their obligations — the debt they owe for the preservation and growth of organized society. In the realm of public finance it is necessary to begin right and then proceed to make haste slowly, holding fast to existing laws until we are at least reasonably sure that something better has been found to take their place.

As a possible basis of reform along evolutionary lines the following may be suggested: —

1. A temporary revenue commission. If the next General Assembly accomplished nothing more than the creation of such a commission, clothed with ample power and provided with sufficient funds to make a thorough investigation, enough would be done along the line of tax legislation. Indeed, we do not hesitate to suggest that no important change in our revenue system should be attempted until a report is made by a competent body of men presenting the facts about Iowa assessment without which any wise fiscal legislation is impossible.

2. Following this, at the next session a permanent tax commission should be created, clothed with larger powers of investigation and administration. State equalization, the State assessment of certain public service corporations, and other fiscal matters now handled in a perfunctory manner by the Executive Council, should be given over to this commission for more serious study and real administration. In this connection the writer again desires to state that he does not imply the least criticism of men. It is the system which is condemned — a system that makes it impossible for any body of men to administer the tax laws in an efficient manner. The establishment of a permanent commission would afford Iowa a sure and safe basis of scientific reform, and would therefore be ample labor along taxation lines for one General Assembly.

3. With a real beginning made, the permanent commission would be in a position to investigate more carefully the all important problem of assessment as similar bodies have done in other States. A plan of fiscal centralization could be gradually formulated, and perhaps the county system of assessment with expert deputies ultimately established. Judging from the experience of Wisconsin, Minnesota, and Kansas substantial progress is possible along these lines, but it is possible only in obedience to the laws of evolution. The writer is convinced that anything worthy of being called a solution of the problem of uniform assessment at actual value, realized as it must be through administrative centralization, will require at least a generation of patient ceaseless labor on the part of honest and able public servants. If the reader doubts this statement let him open the latest report of the Wisconsin commission — a body of strong earnest men who have already been busy for more than a decade.

4. After the permanent commission is well established one of the leading questions which will naturally claim its attention is the proper distribution of taxes received from State wide public service corporations. The present system discriminates against the towns and cities as well as against a majority of rural townships, and that largely for the benefit of a minority of favored taxing districts. It has been demonstrated that the only remedy for these conditions is the payment of all taxes on non-local values directly into the State treasury, the taxes on local values being either collected by the State and redistributed to the localities or levied by the local units themselves, as in New Jersey, on the basis of an assessment made by the tax commission. The ad valorem principle and State assessment should be retained.

5. Finally, the most complex of all our fiscal problems, what to do with the personal property tax, will be a weighty

task for the commission. The verdict of an historical and comparative study of taxation in Iowa is that the personal property tax is fundamentally and radically wrong in principle and must sooner or later be abolished. Its repeal, however, should be made gradually, as adequate substitutes are provided. Among the substitutes are the efficient administration of the ad valorem system where such system can be applied, the Pennsylvania plan for certain other credits, and the business or rental taxes of Canada.

A mere statement of these important problems, including the thorough reform of our inheritance tax laws, the introduction of a system of geographical assessment to take the place of the present alphabetical plan, and other changes which might be mentioned, will give the reader some conception of the meaning of scientific tax reform and how the same may ultimately be accomplished.

APPENDIX

APPENDIX A
CONSTITUTION AND RESOLUTIONS OF THE
INTERNATIONAL TAX ASSOCIATION
CONSTITUTION

ARTICLE I — NAME AND OBJECT

Section 1. The name of this Association shall be, "International Tax Association".

Sec. 2. Its objects shall be to formulate and announce, through the deliberately expressed opinion of an annual conference, the best informed economic thought and ripest administrative experience available for the correct guidance of public opinion, legislative and administrative action on all questions pertaining to state and local taxation, and to interstate and international comity in taxation.

Sec. 3. The term "State" or "State and Province" wherever it occurs in this constitution shall be construed to mean any subdivision of a National Government corresponding in governmental rank with the States of the United States of America.

ARTICLE II — MEMBERSHIP

Section 1. Individual membership in this Association shall be divided into two classes:

Class 1. Active members. All professors, instructors and students in the economic and political science department of institutions for higher education; the librarians of all libraries, on account of the library; all state and local officials holding legislative or administrative positions charged with the duty of investigating, legislating upon, or administering tax laws; and all public men, editors, writers and speakers who hold no educational or official position but who have developed a special interest in the subject of state and local taxation, shall be eligible to membership in this class.

Class 2. Sustaining members. All persons agreeing to contribute ten dollars or such larger amount as they may elect to pay annually for the support of this Association, shall be eligible to membership in this class.

Sec. 2. All Memberships shall be continuing, and the dues therefor shall be paid annually unless the membership is discontinued by reason of death, resignation or non-payment of dues.

ARTICLE III — AFFILIATED MEMBERSHIP FOR STATE AND LOCAL ASSOCIATIONS

Section 1. This Association shall encourage the organization of state and local associations on lines that will insure a harmonious co-operation between all such associations, with each other and with this Association, and that will provide the means of conducting investigations, educational propaganda, and efforts to secure the practical application of economic principles and methods of administration upon lines approved by this Association, without duplication of work, with the direct view of seeking economic efficiency in the expenditure of energy and money.

Sec. 2. State and local associations whose constitutions and purposes are approved by the Executive Committee of this Association may become affiliated members of this Association. When a state association becomes an affiliated member of this Association, all memberships of affiliated local associations within such state shall be transferred to affiliated membership in such state association.

ARTICLE IV — DUES AND DONATIONS

Section 1. Each class of members shall pay annual dues as follows:

Class 1. Active Members, Two Dollars.

Class 2. Sustaining Members, Ten Dollars, or such larger amount as the member may elect to pay.

Class 3. Affiliated members shall pay such annual dues as may be determined from time to time by the Executive Committee of this Association.

Sec. 2. All annual dues shall be due and payable in advance, on the date of the application for membership.

Sec. 3. Any member who shall fail to pay his dues within one

year from the date when payable shall be dropped from membership in this Association on account of such non-payment.

Sec. 4. The Executive Committee of this Association may, whenever it deems such a course wise, issue a call to the general public for voluntary donations to a fund in aid of its general work, or for any specific purpose it may at any time undertake to promote.

ARTICLE V — VOTING POWER AND MEMBERSHIP PRIVILEGES

Section 1. In all meetings of this Association every individual member, and every accredited delegate representing an affiliated association, shall be entitled to one vote, but no person shall be entitled to vote as a member and also as a delegate representing an affiliated association. The basis of representation for affiliated associations shall be determined from time to time by the Executive Committee of this Association, and shall be specified in the official call for each annual meeting.

Sec. 2. Voting by proxy shall not be allowed.

Sec. 3. No member of this Association shall have the right to vote in any Annual Conference by virtue of such membership.

Sec. 4. Propositions may be submitted to the membership of this Association by its Executive Committee to be voted upon by mail ballot. All mail ballots shall be canvassed by the Executive Committee within thirty days after date on which such proposition and ballot were mailed to the membership. Announcement of the result of a mail ballot shall be made by circular addressed to all members entitled to vote.

Sec. 5. All members not in arrears for annual dues shall be entitled to receive, without charge, one copy of the proceedings of the Annual Conference, and one copy of such pamphlets and documents as may be issued by the Association from time to time for general circulation.

ARTICLE VI — ANNUAL CONFERENCE

Section 1. An annual international conference on state and local taxation shall be held under the auspices of this Association, during the month of October in each year, or at such time and place as its executive committee may determine. The details of each conference shall be arranged by the Executive Committee

in co-operation with such special and standing committees as may be created by this Association at its annual meetings for such purpose.

Sec. 2. The educational personnel of each annual conference shall be composed of delegates representing universities and colleges that maintain a special course in public finance, or at which that subject receives special attention in a general course of economics; and public men, editors, writers and speakers who hold no educational or official position but who have developed a special interest in the subject of state and local taxation.

Sec. 3. The administrative personnel of each annual conference shall be composed of three delegates appointed by the Governor of each State and the Premier of each Province, and public officials holding legislative or administrative positions charged with the duty of investigating, legislating upon or administering tax laws.

Sec. 4. The voting power in each conference upon any question involving an official expression of the opinion of the conference shall be vested in one delegate, who shall cast one vote, for each university and college, or institution for higher education, represented in the conference, and one vote for each delegate present appointed by the Governor of a State or by the Premier of a Province, but no delegate shall vote as the representative of an educational institution and also as the representative of a State or Province.

Sec. 5. Voting by proxy shall not be allowed.

Sec. 6. No member of this Association shall have the right to vote in any annual conference by virtue of such membership.

Sec. 7. The last session of each annual conference, or so much of it as may be necessary, shall be devoted to the consideration of the report of the conference committee on Resolutions and Conclusions. The report of this committee, as adopted by the conference, shall be its official expression of opinion, and it shall not be held to have endorsed any other expression of opinion by whomsoever made. The voting power of the conference upon an official expression of its opinion, is limited to delegates representing educational institutions and delegates representing States and Provinces by appointment of their Governor or Premier, with the pur-

pose of safe-guarding the conference from the possibility of having its expression of opinion influenced by any class interest; or consideration for those who devote their time to the work or management of this Association; or favor for those who contribute money for its support. The Annual Conference will be the means used by the Association for carrying into practical effect its purpose to secure an expression of opinion that will formulate and announce the best informed economic thought and ripest administrative experience available for the correct guidance of public opinion, legislative and administrative action on all questions pertaining to state and local taxation, and to interstate and international comity in taxation.

Sec. 8. The temporary and permanent chairman; secretary and official stenographer; address of welcome and response to the same; meeting place, accommodations for delegates, and all necessary preliminary details for each conference, and also the program of papers and discussions, shall be arranged for the conference by the Executive Committee of this Association, in co-operation with a local committee and such other committees as it may appoint. All other details of the organization and work of the conference shall be arranged by the delegates present in such manner as they may from time to time decide.

ARTICLE VII — ANNUAL AND SPECIAL MEETINGS OF THE ASSOCIATION

Section 1. The annual meeting of the Association shall be held on the day next following the day of the last session of the annual conference at the same place at which the conference was held, and at such hour as its Executive Committee may determine. A sixty days' notice shall be given to all members of the time and place at which each annual meeting is to be held.

Sec. 2. Special meetings of this Association may be held at any time and place, when called by its Executive Committee. At least thirty days' notice shall be given to all members of each special meeting, which notice shall specify the purpose for which the meeting is called, and no business shall be transacted at such meeting other than that specified in the call.

Sec. 3. A majority of all members and delegates representing affiliated associations registered as being present at any annual or

special meeting of this Association shall constitute a quorum for the transaction of business, but such quorum shall at no time be less than fifteen, and whenever the attendance of members and delegates exceeds one hundred, twenty-five shall constitute a quorum.

ARTICLE VIII — OFFICERS AND EXECUTIVE COMMITTEE

Section 1. The work and affairs of this Association shall be administered by a President, a Vice-President, a Secretary, a Corresponding Secretary, a Treasurer: and a Vice-President and a Corresponding Secretary for each National Government represented, who, with six other members shall constitute an Executive Committee, all of whom shall be elected by the Association at its annual meeting to serve for one year and until their successors are duly elected. Five members shall be a quorum of the Executive Committee.

Sec. 2. The terms of all officers, the members of the Executive Committee, and of the members of all standing committees created by this Association, shall begin thirty days after the date of its annual meeting.

Sec. 3. A vacancy in any office or in the membership of the Executive Committee or of any Standing Committee may be filled by the Executive Committee for the unexpired term.

ARTICLE IX — DUTIES OF OFFICERS AND COMMITTEES

Section 1. The officers of this Association shall perform the customary duties of their respective offices, and such other duties as may be assigned to or required of them from time to time by its Executive Committee, or by the Association.

Sec. 2. If compensation is paid to any officer of this Association, the amount thereof shall be fixed by the Executive Committee, and payment shall be made only as authorized by this Committee.

Sec. 3. The Executive Committee and all Standing Committees created by this Association shall perform such general and special duties as may be assigned to them by the Association.

Sec. 4. Such Standing and Special Committees may be created from time to time by this Association, or by its Executive Com-

mittee, as may be deemed necessary for the efficient promotion of the work being undertaken. All Committees appointed by the Association shall report to the Association.

ARTICLE X — FINANCIAL MANAGEMENT

Section 1. This Association, its Executive Committee, or any of its officers, agents or employees shall have no power to contract a debt, or liability of any kind, for which the Association or its members collectively or individually, can be held responsible, in excess of the amount of its funds available for the payment of the same.

Sec. 2. The fiscal year of the Association shall begin with the first day of the month of September and end with the last day of the month of August in each year.

Sec. 3. The accounts of the Association for each fiscal year shall be closed on the 31st day of August in each year. They shall be audited by a chartered or certified public accountant, who shall certify to the correctness of the financial reports submitted to the Association at its annual meeting.

ARTICLE XI — GENERAL OFFICES AND LIBRARY

Section 1. Until otherwise directed by the Association, its general offices and library shall be established and maintained at Columbus, Ohio, U. S. A.

Sec. 2. This Association shall accumulate and properly index, as rapidly as its funds will permit, a reference and circulating library which shall contain one or more copies of every useful leaflet, pamphlet, address, document and book on the subject of state and local taxation. As far as is possible with the funds available for the purpose, this library shall be kept continuously written up to date and indexed so as to enable its custodian to supply on application correct and full reference to all authorities on any phase of the subject of state and local taxation, the decisions of courts, the statistical results of taxation laws and of changes made in such laws from time to time.

Sec. 3. The services of this Library shall be without charge to all members of this Association and to all legislative, executive and judicial officers of states and of their political subdivisions, and

to every person desiring to study, discuss or speak upon any feature of the subject of state and local taxation.

ARTICLE XII — PROCEEDINGS AND PUBLICATIONS

Section 1. At each annual meeting the Association shall elect, or authorize its President to appoint, a standing publication committee, under whose supervision a full report of the proceedings of the annual conference last held shall be edited and published. This committee shall also edit and supervise the publication of all reports, pamphlets and literature in other forms issued by this Association.

Sec. 2. The Executive Committee shall authorize the terms of sale or of distribution of all publications issued by this Association.

ARTICLE XIII — BY-LAWS

Section 1. The Executive Committee is authorized to formulate, adopt, and, from time to time amend, such by-laws as it may deem necessary for the good government of the affairs of this Association, and of the official conduct of its officers and committees.

ARTICLE XIV — AMENDMENTS

Section 1. This Constitution may be amended at any annual or special meeting of this Association by a two-thirds vote of all members and delegates representing affiliated associations present, PROVIDED, the full text of the amendment shall have been submitted to the membership by the Executive Committee or by the member or members proposing the same at least thirty days before the date of the meeting at which such proposed amendment is acted upon.

ARTICLE XV — ADOPTION OF THE CONSTITUTION

This Constitution shall be submitted for adoption to such persons as may be present at the annual meeting to be held in Toronto, Ontario, on October 9, 1908, who shall have previously subscribed and paid, during the year 1908, two dollars or more for the support of this Association.

Upon the adoption of this Constitution all persons who shall have previously subscribed and paid, during the year 1908, two dollars

or any larger amount less than ten dollars for the support of this Association, shall thereby become Active Members of this Association, with dues paid for the year 1908; and all persons who shall have previously subscribed and paid, during the year 1908, ten dollars or more, for the support of this Association, shall thereby become Sustaining Members of this Association, with dues paid for the year 1908.

**RESOLUTIONS ADOPTED AT THE FIRST CONFERENCE
HELD AT COLUMBUS, OHIO,
NOVEMBER 12-15, 1907**

[At this conference 33 States, 3 Provinces, and 31 Universities were represented.]

CONSTITUTIONAL RESTRAINTS

WHEREAS, The greatest inequalities have arisen from laws designed to tax all the widely differing classes of property in the same way and such laws have been ineffective in the production of revenue, and whereas the appropriate taxation of various forms of property is rendered impossible by the restrictions upon the taxing power contained in the constitutions of many of the states:

RESOLVED: That all state constitutions requiring the same taxation of all property, or otherwise imposing restraints upon the reasonable classification of property, should be amended by the repeal of such restrictive provisions.

TAXATION OF INHERITANCES

WHEREAS: The several states are now taxing inheritances with marked success, and need all the revenue that can properly be drawn from this source, and

WHEREAS: The federal government can readily raise additional revenue, when required, from other sources,

RESOLVED, That it is the sense of this Conference that inheritance taxes should be reserved wholly for the use of the several states.

**THE SAME PROPERTY SHOULD NOT BE TAXED BY TWO STATE
JURISDICTIONS**

WHEREAS: The principles of international and interstate comity require that the same property should not be taxed by two jurisdictions at the same time, and the laws for taxation of the transfer of property at death commonly transgress these principles; be it

RESOLVED: That succession and inheritance tax laws should be so amended that the same property shall not be taxed by two jurisdictions at the death of the owner.

RESOLVED: That the same principles should be applied in all tax legislation to the end that no property should be taxed by two state jurisdictions at the same time.

RETALIATORY TAX LEGISLATION SHOULD BE REPEALED

WHEREAS: Retaliatory taxation is contrary to interstate comity and is in the nature of interstate war; be it

RESOLVED: That all retaliatory legislation be repealed.

PUBLIC DEBTS SHOULD BE EXEMPTED FROM TAXATION

WHEREAS: The United States Supreme Court truly stated that a tax on public debts is a tax on the power of states, counties and municipalities to borrow money,

RESOLVED: That all public debts of all states, counties and municipalities should everywhere be exempted from taxation.

SOURCES OF STATE AND LOCAL REVENUE SHOULD BE SEPARATED

WHEREAS: The reliance by state governments for revenue upon the taxes ordinarily imposed on property as assessed by local officials has produced sectional injustice and jealousy and local inequality, and whereas the general property tax as a source of state revenue enforces a rigid uniformity which can take no account of actual conditions; be it

RESOLVED: That the state and local revenue systems should be so far divorced that by general laws the appropriate local governing bodies may, if deemed expedient, be granted certain limited and carefully prescribed powers over the licensing of occupations and the selection of subjects of local taxation and the rate of assessments upon such subjects.

**RESOLUTIONS ADOPTED AT THE SECOND CONFERENCE
HELD AT TORONTO, CANADA,
OCTOBER 6-9, 1908**

[At this conference 24 States, 5 Provinces, and 18 Universities were represented.]

REAFFIRMATION

RESOLVED: That this Conference reaffirms the resolutions adopted at the meeting held at Columbus, Ohio, November 12-14, 1907.

TAX LAWS TO ENCOURAGE GROWTH OF FORESTS

RESOLVED: That it is within the legitimate province of tax laws to encourage the growth of forests in order to protect watersheds and insure a future supply of timber; and legislation, or constitutional amendment where necessary, is recommended for these purposes.

TAXATION OF PUBLIC SERVICE CORPORATIONS

WHEREAS: In some states the system of taxing the property and franchises of public service corporations requires the action of a large number of assessing bodies and the laws are frequently indefinite, resulting in costly litigation and delay in payment of taxes;

RESOLVED: That a rational system of taxation requires greater simplicity and certainty and action by the smallest possible number of assessing boards.

**STATES AND PROVINCES REQUESTED TO MAKE APPROPRIATIONS FOR
PURCHASE OF PROCEEDINGS AND TO PAY EXPENSES
OF OFFICIAL DELEGATES**

RESOLVED: That this Conference respectfully requests the legislatures of the several states and provinces of the United States and the Dominion of Canada to include in their appropriations an annual allowance for the purchase of a suitable number of copies of the volume containing the proceedings of each conference for distribution under the direction of the Governor or Premier of each State or Province, and for paying the actual traveling and personal expenses of three delegates to represent each state or province in the annual conference.

**RESERVATION OF THE TAXATION OF INHERITANCES AS A SOURCE OF
REVENUE FOR THE SEVERAL STATES**

RESOLVED: That the President of the International Tax Association be requested to take appropriate action to bring to the attention of the governors of the several States of the United States the preamble and resolution adopted at the first National Tax Conference in relation to the reservation of inheritance taxes to the uses of the several States, with a view to securing the adoption of suitable resolutions by the State legislatures of the several States and by the Congress of the United States.

**RESOLUTIONS ADOPTED AT THE THIRD CONFERENCE
HELD AT LOUISVILLE, KENTUCKY,
SEPTEMBER 21-24, 1909**

[At this conference 40 States, 3 Provinces, and 27 Universities were represented.]

NO PARTISAN POLITICAL SIGNIFICANCE

WHEREAS: An effort has been made outside this conference to attach a partisan political significance to the discussions of the conference and its committees on the Federal Income and Corporation Tax questions,

RESOLVED: That we place on record the fact that no partisan political considerations have at any time entered into the deliberations of the conference or its committees, and that reports to that effect are untrue.

ADJUSTMENT OF NATIONAL TO STATE AND LOCAL TAXATION

WHEREAS: The adjustment of national to state and local taxation is a matter of vital concern to the States, as well as to the Nation, since the revenues of both are affected by such adjustment, and,

WHEREAS: This subject requires serious and thorough consideration from the point of view of the State, as well as that of the Nation, and,

WHEREAS: The organization of the proposed association of Governors will afford opportunity to secure such consideration;

RESOLVED: That this Conference requests its permanent chairman, the Governor of Kentucky, to submit the subject for the consideration of the Governors at the first meeting of their association.

UNIFORM CLASSIFICATION OF REAL PROPERTY

WHEREAS: The Bureau of the Census desires to prepare and publish exhibits of real property valuations, so arranged as to show for each civil division the value of various classes of real property, showing the value of land separately, and,

WHEREAS: Such classification will tend to secure a more equitable assessment of real property;

RESOLVED: That the Conference recommends to the International Tax Association that a committee be appointed upon uniform classification of real property, which shall prepare and submit to future Conferences and to the Legislatures of the States and Provinces, a classification of real property, such as is contemplated by these resolutions, and to submit future Conferences such further recommendations as the committee may deem advisable to secure the early adoption by our several States and Provinces of such uniform classification of real property as will aid the Bureau of the Census, and will assist in freeing the administration of the general property tax from the inequality partly due to the absence of any uniform or other classification of real property values.

STATE LAWS RELATING TO CORPORATION TAXATION

RESOLVED: That this Conference commends the recent compilation by the United States Bureau of Corporations of State Laws relating to corporation taxation, and urges the early publication of similar compilations of the laws of other States and Territories relating to the same subject.

CAUSE OF THE FAILURE OF THE GENERAL PROPERTY TAX

WHEREAS: The working of the general property tax depends upon the efficiency and thoroughness of its administration, which in most States is confided to officials locally elected or appointed; and,

WHEREAS: The general property tax as thus administered is severely criticised by students of the subject as unjust and unequal between taxpayers in the same district;

RESOLVED: That a committee of three members be appointed by the executive committee of the International Tax Association to investigate whether the failure of the general property tax is due to inherent defects in the system itself, or to weakness in its administration, and to report to the next annual conference its conclusions upon this subject; including in the investigation, if deemed necessary, the further question of the advisability of substituting an income tax in whole or in part for the personal property tax.

UNIFORM TAXATION OF THE BUSINESS OF INSURANCE

WHEREAS: The taxation of the business of insurance is a problem different from that presented by the taxation of other corporations;

RESOLVED: That the laws of the several states relating to the taxation of insurance companies should be uniform so far as permissible by State Constitutions, and that all retaliatory legislation be abandoned as contrary to interstate comity, and that this conference recommends that the executive committee of the International Tax Association appoint a committee of three to investigate the question of insurance taxation and report to the next annual conference.

APPENDIX B

BIBLIOGRAPHY OF STATE TAX COMMISSIONS AND TAX COMMISSIONERS

The material herein presented was compiled by the International Tax Association from data furnished by Chairmen of State Tax Commissions and by Tax Commissioners. The writer is indebted for the material to the Secretary of the International Tax Association. Commissions followed by a star are special or temporary commissions.

ALABAMA

STATE TAX COMMISSION

DATE OF ESTABLISHMENT — March 7, 1907.

LENGTH OF TERM — Four years.

NUMBER OF MEMBERS — Three.

REPORTS — Required to make reports to the Governor before the meeting of the legislature in January of each fourth year. Has never made such report, but issues an annual statement of work accomplished. Makes no recommendations for improving tax laws. Has issued statements of work on October 1, 1907, and October 1, 1908.

SALARY — Members, \$2,400. Chairman, \$3,000. Secretary, \$1,800.

CALIFORNIA

STATE COMMISSION ON REVENUE AND TAXATION*

DATE OF ESTABLISHMENT — March 20, 1905.

LENGTH OF TERM — Original members still hold office. No provision is made for the termination of their office or the appointment of others.

NUMBER OF MEMBERS — Six.

REPORTS — Issued irregularly. Preliminary report, August, 1906. Formal report, December, 1906.

SALARY — Of the expert, not to exceed \$250 per month. Members other than the expert and the chairman, \$10 per diem and necessary expenses.

CONNECTICUT

STATE TAX COMMISSIONER

DATE OF ESTABLISHMENT — 1901.

LENGTH OF TERM — Four years.

REPORTS — Biennially. Has issued reports in 1905, 1906, and 1908.

SALARY — \$3,000.

DELAWARE

STATE REVENUE AND TAXATION COMMISSION*

DATE OF ESTABLISHMENT — 1907. Continued by the General Assembly in 1909 for two additional years.

NUMBER OF MEMBERS — Nine.

REPORTS — Biennially. Has issued one report — 1909.

SALARY — \$5.00 per day for each day of session, and actual expenses.

ILLINOIS

In 1885 a Tax Commission* was appointed under legislative act, by Governor Oglesby. It was composed of twelve members. Its purpose was to amend and revise the revenue laws and to propose and frame a revenue code. It reported in March, 1886.

A temporary State Tax Commission, composed of seven members, was appointed by Governor Deneen in 1910. It is to report to the next session of the General Assembly.

INDIANA

STATE BOARD OF TAX COMMISSIONERS

DATE OF ESTABLISHMENT — 1891.

LENGTH OF TERM — Four years.

NUMBER OF MEMBERS — Three.

REPORTS — Annually. 1891 to 1908, inclusive.

SALARY — \$3,000.

KANSAS

TAX COMMISSION OF KANSAS

DATE OF ESTABLISHMENT — 1907.

LENGTH OF TERM — Four years.

NUMBER OF MEMBERS — Three.

REPORTS — Two are issued biennially, one thirty days in advance of the regular session of the legislature, to the Governor and the members of the legislature; and one to the legislature on the first day of its legislative session. One report of each kind has been issued: October 15, 1908, and January 12, 1909.

SALARY — \$2,500.

NOTE — A special commission created in 1901 issued a report in that year recommending the creation of a permanent commission, and numerous changes in the law, but no action was ever taken on this report.

LOUISIANA

TAX COMMISSION OF LOUISIANA*

DATE OF ESTABLISHMENT — 1906.

LENGTH OF TERM — Was appointed to investigate and make a report to the General Assembly in 1908.

NUMBER OF MEMBERS — Fifteen.

REPORTS — 1908.

SALARY — No compensation. Members advanced expenses, but have since been repaid by an appropriation for that purpose.

MAINE

TAX COMMISSION*

DATE OF ESTABLISHMENT — September, 1907.

LENGTH OF TERM — Served until December, 1908.

NUMBER OF MEMBERS — Five.

REPORTS — But one issued, December, 1908.

SALARY — \$3,000 for entire time of service.

MARYLAND

STATE TAX COMMISSIONER

DATE OF ESTABLISHMENT — 1878.

LENGTH OF TERM — Four years.

NUMBER OF MEMBERS — One.

REPORTS — Biennially, 1878-1908.

SALARY — \$2,500, with \$800 traveling expenses.

MASSACHUSETTS

TAX COMMISSIONER

DATE OF ESTABLISHMENT — As a separate department in 1890. From 1864 to 1890 the Treasurer and Receiver General acted as Tax Commissioners.

LENGTH OF TERM — Three years.

NUMBER OF MEMBERS — One Commissioner and a Deputy.

REPORTS — Annually. Treasurer and Receiver General, 1864-1890. Tax Commissioner, 1890 to date.

SPECIAL REPORTS — Commissioners on Taxation, 1875. Joint Special Committee, 1893. Commission on Taxation, 1897. Committee on Corporation Law, 1903. Joint Special Committee, 1907. Commission on Taxation, 1908.

SALARY — \$5,000.

MICHIGAN

BOARD OF STATE TAX COMMISSIONERS

DATE OF ESTABLISHMENT — 1899.

LENGTH OF TERM — Six years.

NUMBER OF MEMBERS — Three.

REPORTS — Biennially. Has issued reports as follows: 1900, 1901-1902, 1903-1904, 1905-1906, 1907-1908.

SALARY — \$2,500.

MINNESOTA

MINNESOTA TAX COMMISSION

DATE OF ESTABLISHMENT — April 29, 1907.

LENGTH OF TERM — Two, four, and six years, thereafter six year terms.

NUMBER OF MEMBERS — Three.

REPORTS — Biennially. Preliminary report, 1907. Formal report, 1908.

SALARY — \$4,500.

NOTE — A special Tax Code Commission issued a report in 1902, now out of print.

MISSOURI

SPECIAL TAX COMMISSION*

DATE OF ESTABLISHMENT — February, 1902.

LENGTH OF TERM — One year.

NUMBER OF MEMBERS — Three.

REPORTS — February 7, 1903.

NEW HAMPSHIRE

NEW HAMPSHIRE TAX COMMISSION*

DATE OF ESTABLISHMENT — December 26, 1907.

LENGTH OF TERM — To serve for the year 1908 only.

NUMBER OF MEMBERS — Three.

REPORTS — 1908.

SPECIAL REPORTS — Report of Hon. Geo. G. Sawyer, Chairman of Board of Commissioners to revise, codify and amend the tax laws of the State. Commission appointed under Joint Resolution approved July 8, 1874.

Report of Tax Commissioners of the State of New Hampshire made to the legislature, June session, 1878. Commission appointed under Chapter 98, Laws of 1877.

SALARY — A reasonable compensation.

NEW JERSEY

BOARD OF EQUALIZATION OF TAXES

DATE OF ESTABLISHMENT — 1905. Succeeded the State Board of Taxation, which had been created in 1891 and was abolished in 1905.

LENGTH OF TERM — First appointment, one, two, three, four and five years. Subsequent appointments, five years.

NUMBER OF MEMBERS — Five.

REPORTS — Annually. 1905 to date.

SPECIAL REPORTS — By temporary commissions to investigate subject of taxation: 1867, 1879, 1882, 1890, 1896, and 1905. All out of print except 1896 report.

The State Board of Taxation, created in 1891 in accordance with recommendations made by Special Tax Commission of 1890, issued reports annually 1891-1904, inclusive.

SALARY — \$3,500. Chairman, \$5,000.

NEW YORK

BOARD OF STATE TAX COMMISSIONERS

DATE OF ESTABLISHMENT — 1896.

LENGTH OF TERM — Three years.

NUMBER OF MEMBERS — Three.

REPORT — Annually. 1896 to date.

SPECIAL REPORTS — Report of Joint Committee on Taxation, February, 1863.

Report of the Commission appointed by the Governor to revise the laws for assessment and collection of State and local taxes; David A. Wells, Chairman. February 16, 1871.

Report of same commission, 1872.

Report of Counsel appointed by the Governor to revise the tax laws of the State (Collins and Fiero), February 3, 1893.

Report of Joint Committee of Senate and Assembly, relative to taxation for State and local purposes. Transmitted to the legislature March 17, 1893.

Report of Joint Committee on Taxation, January 15, 1900.

Special Tax Commission Report, January 15, 1907.

SALARY — \$5,000.

NOTE — The State Board of Assessors was created in 1859. They probably reported annually from 1860 to 1895.

NORTH CAROLINA

CORPORATION COMMISSION

DATE OF ESTABLISHMENT — The Corporation Commission was made a Tax Commission in 1901.

LENGTH OF TERM — Six years.

NUMBER OF MEMBERS — Three.

REPORTS — Annually, 1901 to date.

SALARY — \$3,000.

OHIO

TAX COMMISSION OF OHIO*

DATE OF ESTABLISHMENT — April 24, 1893.

LENGTH OF TERM — Submitted its report, December 23, 1893.

NUMBER OF MEMBERS — Four.

REPORTS — Only one submitted, as above noted.

HONORARY TAX COMMISSION OF OHIO*

DATE OF ESTABLISHMENT — September 21, 1906.

LENGTH OF TERM — Submitted its report, January 10, 1908.

NUMBER OF MEMBERS — Five.

REPORTS — Only one submitted, as above noted.

SALARY — No compensation.

TAX COMMISSION OF OHIO

DATE OF ESTABLISHMENT — 1910.

LENGTH OF TERM — Three years.

NUMBER OF MEMBERS — Three. Appointed by the Governor, with the consent of the Senate. Not more than two to be of the same political party.

POWERS AND DUTIES — Assesses the property of certain corporations and is given general supervision of the revenue laws of the State.

SALARY — \$5,000.

OREGON

BOARD OF STATE TAX COMMISSIONERS

DATE OF ESTABLISHMENT — February 24, 1909.

LENGTH OF TERM — Of the two appointed members, four years.

NUMBER OF MEMBERS — Five. The Governor, Secretary of State, and State Treasurer are ex-officio members. The two additional members are appointed by them.

REPORTS — Are required to report biennially to the legislature.

SPECIAL REPORTS — A special Tax Commission of three members was appointed June, 1905. Reported to the Governor, June 30, 1906.

SALARY — Of the two appointed members, \$2,500.

PENNSYLVANIA

The legislature of Pennsylvania on May 13, 1909, adopted a resolution providing that the President pro tempore of the Senate should appoint three Senators and the Speaker of the House of Representatives should appoint three of its members, to constitute a Joint Committee to consider the laws of the Commonwealth relating to corporations and to revenue, and to report to the next legislature whatever changes they deem necessary therein, together with recommendations, etc. The Committee is also required to make a full report to the Governor of the Commonwealth of its findings with such recommendations as it may deem proper, six months prior to the meeting of the General Assembly in the session of 1911.*

RHODE ISLAND

JOINT SPECIAL COMMITTEE ON TAXATION*

DATE OF ESTABLISHMENT — January, 1909.

NUMBER OF MEMBERS — Five. Composed of two Senators appointed by the Governor and three members of the House appointed by the Speaker.

REPORTS — Required to report to the legislature not later than February 15, 1910.

SALARY — To serve without compensation.

TEXAS

STATE TAX BOARD

DATE OF ESTABLISHMENT — May 16, 1907.

LENGTH OF TERM — Tax Commissioner, two years.

NUMBER OF MEMBERS — Three. Composed of Secretary of State, Comptroller, and Tax Commissioner of the State of Texas.

REPORTS — Annually. 1906, 1907, 1908.

SALARY — Tax Commissioner, \$2,500.

NOTE — The first report was issued by the State Tax Commissioner under the law passed by the 29th legislature. Said law was amended by the 30th legislature.

VERMONT

COMMISSION ON TAXATION*

DATE OF ESTABLISHMENT — December 19, 1906.

LENGTH OF TERM — Its duties as such ended on the first Wednesday in October, 1908.

NUMBER OF MEMBERS — Six.

REPORTS — But one report issued, 1908.

SPECIAL REPORTS — In 1898 a Special Commission was appointed to investigate the laws permitting double taxation. Reported October, 1900.

SALARY — Fixed by the Governor and paid by the State.

WASHINGTON

STATE BOARD OF TAX COMMISSIONERS

DATE OF ESTABLISHMENT — 1905.

LENGTH OF TERM — Four years.

NUMBER OF MEMBERS — Three.

REPORTS — Biennially. 1906, 1908.

SALARY — \$3,000.

WEST VIRGINIA

STATE TAX COMMISSIONER

DATE OF ESTABLISHMENT — August, 1904.

LENGTH OF TERM — Six years.

NUMBER OF MEMBERS — One.

REPORTS — Biennially, and such other times as the Governor may require. First Biennial report issued September, 1906. Second biennial report (preliminary), September, 1908. Second biennial report (permanent), December, 1908.

SPECIAL REPORTS — On February 20, 1901, the legislature passed

an act authorizing the Governor to appoint a Commission to revise the tax laws. A Commission of five was appointed and submitted a preliminary report in October, 1902.

SALARY — \$4,000.

WISCONSIN

WISCONSIN STATE TAX COMMISSION

DATE OF ESTABLISHMENT — 1905.

LENGTH OF TERM — Eight years.

NUMBER OF MEMBERS — Three.

REPORTS — Biennially.

SALARY — \$5,000.

NOTE — By Chapter 340, Laws of 1897, a special tax commission was appointed to hold office until December 31, 1898.

By Chapter 206, Laws of 1899, the office of commissioner of taxation was created, and first and second assistant commissioners of taxation were appointed to hold office for ten years.

The dates of the reports of the several commissions are as follows: 1898, 1901, 1903, 1907 and 1909.

WYOMING

COMMISSIONER OF TAXATION

DATE OF ESTABLISHMENT — February 20, 1909.

NUMBER OF MEMBERS — One.

LENGTH OF TERM — First appointment, two years. Subsequent appointments, four years.

Reports — Annual and biennial.

SALARY — \$2,500.

LAWS CREATING STATE TAX COMMISSIONS AND THE OFFICE OF STATE TAX COMMISSIONER CALIFORNIA

AN ACT authorizing the Governor to appoint an expert in taxation and public finance, to sit as a member of a commission to be com-

posed of himself and a general committee of the Senate and Assembly of the thirty-sixth session of the legislature of the State of California, of which commission the Governor shall be ex-officio a member and chairman, to investigate the system of revenue and taxation in force in this State, and to recommend a plan for the revision and reform thereof; to provide for the creation of said commission, and to define its powers, and making an appropriation therefor.

(Approved March 20, 1905.)

The people of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. If and when the Senate and Assembly of the thirty-sixth session of the legislature of the State of California shall provide for the appointment, and there shall be appointed pursuant to said provision, a joint committee of said Senate and Assembly to investigate the system of revenue and taxation in force in this State, and to recommend a plan for the revision and reform thereof, the Governor is authorized to appoint an expert in taxation and public finance, to sit with said committee, and with said committee to constitute a commission upon the revision and reform of the system of revenue and taxation in force in this State. The Governor shall be ex-officio a member of said commission and shall be chairman thereof.

SEC. 2. Said expert shall hold his office at the pleasure of the Governor.

SEC. 3. The compensation of said expert shall be fixed by the said commission in an amount not to exceed two hundred and fifty dollars per month.

SEC. 4. Said commission is authorized and empowered to do any and all things necessary to make a full and complete investigation of the matters and things hereinabove enumerated, and to that end to employ all necessary clerical and expert assistance, and that said commission be and it hereby is authorized and empowered to send for persons and papers, and to take all necessary means to procure the attendance of witnesses and testimony; and the members of said commission are, and each of them is, hereby authorized to administer oaths; and that all the provisions of article eight, of

chapter two, title one, part three of the Political Code of this State, relative to the "attendance and examination of witnesses before the legislature and committees thereof," shall apply to the commission; and that the sergeant-at-arms of either the Senate or the Assembly is hereby authorized and directed to serve all subpoenas and orders or other process that may be issued by the chairman of said commission, when directed to do so by the said chairman.

SEC. 5. The members of said commission, other than the chairman and the member appointed by the Governor, shall be paid the sum of ten dollars (\$10) per diem and their necessary expenses, while actually engaged in the performance of their duties as prescribed in this act.

SEC. 6. There is hereby appropriated out of the general fund, not otherwise appropriated, the sum of ten thousand dollars, or so much thereof as may be necessary, for the purposes of this act.

SEC. 7. This act shall take effect immediately.

WISCONSIN

AN ACT, to create a permanent tax commission and transferring to such commission the powers and duties of the present commissioner and assistant commissioners of taxation as a state board of assessment or otherwise, and making an appropriation therefor.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. There is hereby created a state board to be designated and known as the tax commission, which board shall succeed and take the place of the present commissioner and assistant commissioners of taxation and the present state boards of assessment composed of said commissioner and assistant commissioners as hereinafter provided.

SECTION 2. Said tax commission shall be composed of three commissioners, who shall be appointed by the governor by and with the advice and consent of the senate. The three persons first to compose said board shall be appointed within ten days after the passage and publication of this act and before the ad-

jourment of the present legislature if practicable. Of such three persons one shall be appointed and designated to serve for a term ending on the first Monday in May, 1909, one for a term ending on the first Monday in May, 1911, and one for a term ending on the first Monday in May, 1913, each of said terms to begin upon the qualification of the person appointed therefor. Upon the expiration of the terms of the three commissioners first to be appointed as aforesaid, each succeeding commissioner shall be appointed and shall hold his office for the term of eight years, except in the case of a vacancy as hereinafter provided, and each commissioner shall hold his office until his successor shall have been appointed and qualified.

SECTION 3. After the appointment of said first three commissioners and except when appointed to fill a vacancy, each commissioner shall be appointed on or before the last Monday in February during the biennial session of the legislature next preceding the commencement of the term for which he shall be appointed. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which such vacancy shall occur, subject to confirmation by the senate. If such appointment be made when the legislature is not in regular session, the appointee shall hold his office until the first Monday of February in the next biennial session of the legislature, when, if such appointment is not confirmed by the senate, the office shall become vacant, and, on or before the last Monday in the same month, the governor, by and with the advice and consent of the senate, shall appoint a suitable person to fill such vacancy for the remainder of such term.

SECTION 4. The persons to be appointed as members of such commission shall be such as are known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. So far as practicable they shall be so selected that the board will not be composed wholly of persons who are members of or affiliated with the same political party or organization. No person appointed as such commissioner shall hold any other office under the laws of this state nor any office under the government of the United States or of any other state. Each such commissioner shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, engage in any occupation or business inter-

fering with or inconsistent with his duties, or serve on or under any committee of any political party.

SECTION 5. Each commissioner, within thirty days after notice of his appointment and before entering upon the discharge of the duties of his office, shall take, subscribe and file with the secretary of state the oath of office prescribed by the constitution of this state. Each of said commissioners shall receive an annual salary of five thousand dollars, payable in the same manner that salaries of other state officers are paid.

SECTION 6. The commissioners first appointed under this act, after having duly qualified, shall without delay meet at the capitol in Madison, and shall thereupon organize and elect one of their number as chairman. A majority of said commissioners shall constitute a quorum for the transaction of the business and the performance of the duties of the commission. The said commission shall be in continuous session and open for the transaction of business every day except Sundays and legal holidays; and the sessions of such commission shall stand and be deemed to be adjourned from day to day without formal entry thereof upon its records. The commission may hold sessions or conduct investigations at any place other than the capital when deemed necessary to facilitate the performance of its duties.

SECTION 7. Said commission may appoint a secretary at a salary of not more than two thousand dollars per annum, one clerk at a salary of not more than fifteen hundred dollars, one clerk at a salary of not more than twelve hundred dollars, and one at a salary of not more than one thousand dollars, one of which clerks shall be a stenographer. The commission may employ such other persons as experts and assistants as may be necessary to perform the duties that may be required of the commission and fix their compensation. The secretary shall keep full and correct minutes of all hearings, transactions, and proceedings of said commission and shall perform such other duties as may be required by the commission. The commission shall have power to make all needful rules, not inconsistent with law, for the orderly and methodical performance of its duties as a board of assessment or otherwise, and for conducting hearings and other proceedings before it.

SECTION 8. The commission shall keep its office at the capital and shall be provided with suitable rooms, necessary office furniture, supplies, stationery, books, periodicals, and maps; and all necessary expenses shall be audited and paid as other state expenses are audited and paid. The commissioners, secretary and clerks, and such experts and assistants as may be employed by the commission shall be entitled to receive from the state their actual necessary expenses while traveling on the business of the commission; such expenditures to be sworn to by the party who incurred the expense and approved by the chairman of the commission or a majority of the members of such commission.

SECTION 9. It shall be the duty of the commission, and it shall have power and authority:

(1) To have and exercise general supervision over the administration of the assessment and tax laws of the state, over assessors, boards of review and supervisors of assessment, and over county boards in the performance of their duties as county boards of assessment, to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law.

(2) To confer with, advise and direct assessors, boards of review, county boards of assessment and supervisors of assessment as to their duties under the statutes of the state.

(3) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities and punishment of public officers, persons, and officers or agents of corporations for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property; and to cause complaints to be made against assessors, members of boards of review, supervisors of assessment, and members of county boards, or other assessing or taxing officers, to the proper circuit judge for their removal from office for official misconduct or neglect of duty.

(4) To require district attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals and punishment for violations of the laws of the state in respect to the assessment and taxation of property, in their respective counties.

(5) To require town, city, village, county and other public

officers to report information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful in the work of the commission, in such form and upon such blanks as the commission may prescribe.

(6) To require individuals, partnerships, companies, associations and corporations to furnish information concerning their capital, funded or other debt, current assets and liabilities, value of property, earnings, operating and other expenses, taxes and all other facts which may be needful to enable the commission to ascertain the value and the relative burdens borne by all kinds of property in the state.

(7) To summon witnesses to appear and give testimony, and to produce records, books, papers and documents relating to any matter which the commission shall have authority to investigate or determine.

(8) To cause the deposition of witnesses residing within or without the state or absent therefrom, to be taken, upon notice to the interested party, if any, in any like manner that depositions of witnesses are taken in civil actions pending in the circuit court, in any matter which the commission shall have authority to investigate or determine.

(9) To visit the counties in the state, unless prevented by other necessary official duties, for the investigation of the work and the methods adopted by local assessors, boards of review, supervisors of assessment and county boards, in the assessment, equalization and taxation of real and personal property.

(10) To carefully examine into all cases where evasion or violation of the laws for assessment and taxation of property is alleged, complained of or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered.

(11) To investigate the tax systems of other states and countries and to formulate and recommend such legislation as may be deemed expedient to prevent evasion of assessment and tax laws and to secure just and equal taxation and improvement in the system of taxation in the state.

(12) To inquire into the system of accounting of public funds in use in towns, cities, villages and counties, and to devise and

prescribe a uniform system of accounting of the receipts and disbursements of public funds in the municipalities of the state.

(13) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws in relation thereto and the progress of the work of the commission, and to furnish the governor from time to time such assistance and information as he may require.

(14) To transmit to the governor and to each member of the legislature, thirty days before the meeting of the legislature, the report of the commission showing all the taxable property in the state and the value of the same in tabulated form with recommendations for improvement in the system of taxation in the state, together with such measures as may be formulated for the consideration of the legislature.

(15) To exercise and perform such further powers and duties as may be granted to or imposed upon the commission by law.

SECTION 10. Oaths to witnesses in any matter under the investigation or consideration of the commission may be administered by the secretary of the commission or by any member thereof. In case any witness shall fail to obey any summons to appear before said commission or shall refuse to testify or answer any material question or to produce records, books, papers or documents when required so to do, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper circuit court to compel obedience to any summons or order of the commission or to punish witnesses for any such neglect or refusal. Any person who shall testify falsely in any material matter under the consideration of the commission shall be guilty of and punished for perjury. In the discretion of the commission, officers who serve summons or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the circuit court.

SECTION 11. The said commission, upon the qualification of its members and the organization thereof as hereinbefore provided, shall become successors in office to the present commissioner and assistant commissioners of taxation, and thereupon all the power and authority vested in or conferred upon said last named officers or any of them, and all duties imposed upon them or any of them, by any act or statute then in force or by any act thereafter taking

effect, passed at this legislative session, shall devolve upon and thenceforth be exercised and performed by said commission, and the office of commissioner of taxation and of the first and second assistant commissioners of taxation shall cease and terminate.

SECTION 12. The power and authority and the duties which shall devolve upon and be exercised and performed by said commission as provided in the preceding section, shall extend to and include all those conferred or imposed upon said commissioner and assistant commissioners of taxation as a state board of assessment or taxing board for any purpose by any act or statute which shall be in force at the time of the organization of said commission and termination of said offices of commissioner and assistant commissioners of taxation, or by any act thereafter taking effect passed at this legislative session, and shall include the power and authority of said commissioner and assistant commissioners as a state board for the assessment and taxation of the property of railroad companies under the provisions of chapter 315 of the laws of 1903 and acts amendatory thereof. All proceedings, hearings or other matters then pending before said commissioner and assistant commissioners, as a state board of assessment or otherwise, and all investigations or other official work undertaken by them or any of them and then remaining uncompleted, shall be continued, carried on and completed by and before said commission. All records, books, papers, documents and memoranda and all office equipment, materials and supplies in the official custody or possession of said commissioner and assistant commissioners of taxation or of any of them, as a state board of assessment or otherwise, upon the termination of their offices as above provided shall be transferred to said commission as their successors in office for all purposes, and said commission shall thereupon and thenceforth have official possession and custody of the same.

SECTION 13. There is hereby annually appropriated out of the general fund in the state treasury a sum sufficient to carry out the provisions of this act.

SECTION 14. This act shall take effect and be in force from and after its passage and publication.

Approved June 15, 1905.

MINNESOTA

AN ACT to create a permanent tax commission, defining the duties of said commission and making an appropriation therefor, and abolishing the state board of equalization.

Be it enacted by the Legislature of the State of Minnesota:

COMMISSION — HOW CREATED. — Section 1. There is hereby created a commission, to be designated and known as the Minnesota Tax Commission.

APPOINTMENT. — Sec. 2. The said Minnesota Tax Commission shall be composed of three members, who shall be appointed by the governor by and with the advice and consent of the senate. The three persons first composing said commission shall be appointed within ten (10) days after the passage of this act and before the adjournment of the present legislature, if practicable.

TERM OF OFFICE. — Sec. 3. Of such three persons composing said commission, one shall be appointed and designated for a term ending Jan. 31st, 1909; one for a term ending Jan. 31st, 1911, and one for a term ending Jan. 31st, 1913, each of said periods and terms of office to begin upon the qualification of the person appointed therefor. Upon the expiration of the terms of the three commissioners first to be appointed as aforesaid, each succeeding commissioner shall be appointed and hold office for the term of six (6) years, except in the case of a vacancy as hereinafter provided, and each commissioner shall hold office until his successor shall have been appointed and qualified. The governor shall have power to remove a commissioner for inefficiency, neglect of duty or malfeasance in office, but, before removal, the commissioner shall be furnished with a copy of the charges against him, and have an opportunity to be heard in defense.

VACANCIES — HOW FILLED. — Sec. 4. After the appointment of said first three commissioners, or except when appointed to fill a vacancy, each commissioner shall be appointed on or before the last Monday in January next preceding the commencement of the term for which he shall be appointed.

In case of a vacancy it shall be filled by appointment by the governor for the expired portion of the term in which said vacancy occurs. Said appointment to be confirmed by the senate. If such appointment is made when the legislature is not in session, the ap-

pointee shall hold office until the first Monday in February during the next succeeding session of the legislature, when, if such appointment is not confirmed, the office shall become vacant, and on or before the last Monday in February in the same month, the governor by and with the advice and consent of the senate shall appoint a suitable person to fill such vacancy for the remainder of such term.

COMMISSION TO BE NON-PARTISAN.—Sec. 5. The persons appointed to be members of such commission shall be such as are known to possess knowledge of and training in the subject of taxation and taxing laws, and skilled in matters pertaining thereto. So far as practicable, they shall be non-partisan and shall be so selected that the commission will not be composed of more than two persons who are members of or affiliated with the same political party or organization. No person appointed a member of said commission shall hold any other office under the laws of this state, nor any office under the government of the United States or any other state.

Each commissioner and each employee shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, engage in any occupation or business interfering with or inconsistent with his duties as such commissioner or employee, or serve on or under any committee of any political party or take part either directly or indirectly, in any political campaign in the interest of any political party or organization or candidate for office.

OATH OF OFFICE.—Sec. 6. Each commissioner and employee shall, within thirty (30) days after notice of his appointment, and before entering upon the discharge of his duties, take, subscribe and file with the secretary of state the oath of office prescribed by the constitution of this state.

CHAIRMAN.—Sec. 7. The member of said commission whose term of office expires Jan. 31st, 1909, shall be chairman of said commission during his term of office, and thereafter the member who has the shortest term of service shall be chairman during the remainder of his term.

Each of the members of the said commission shall receive an annual salary of four thousand five hundred (\$4,500) dollars in equal monthly installments in the same manner that other state salaries are paid.

SESSIONS.—Sec. 8. The commission first appointed under this

act, after having duly qualified, shall, without delay, meet at the capitol in St. Paul. A majority of said commission shall constitute a quorum for the transaction of the business and the performance of the duties of said commission. The said commission shall be in continuous session and open for the transaction of business every day, except Sundays and legal holidays, and the sessions of said commission shall stand and be deemed to be adjourned from day to day without formal entry thereof on its records. The commission may hold session in conducting investigation at any other place than the capitol when deemed necessary to facilitate and render more thorough the performance of its duties.

SALARIES OF EMPLOYEES.—Sec. 9. Said commission may appoint a secretary at a salary not to exceed twenty-four hundred (\$2,400) dollars per annum, and such other experts, assistants and clerks, one of whom shall be stenographer, as may be necessary. *Provided, however,* that the total expense for such experts, assistants and clerks, exclusive of said secretary, shall not exceed six thousand (\$6,000) dollars per annum. And *provided, further,* that if it becomes necessary to employ experts, assistants and clerks beyond such as can be obtained for said sum of six thousand (\$6,000) dollars, then said commission may, with the approval and consent of the governor, attorney general and state auditor, employ such additional assistants as may be necessary. The secretary of the commission shall keep full and correct minutes of all the testimony taken, hearings had and the proceedings of said commission, and shall perform such other duties as may be required by said commission. The said commission shall have power to make all necessary or needful rules consistent with the laws of this state for the orderly and successful performance of its duties and with suitable and necessary office furniture, supplies, stationery, books, for conducting hearings and other proceedings before it.

OFFICES AND SUPPLIES.—Sec. 10. The commission shall be provided periodicals, newspapers, maps and financial and commercial reports and all necessary expenses therefor shall be audited and paid as other expenses are audited and paid.

The actual necessary expenses of the commission and its secretary, clerks and such experts and assistants as may be employed by said commission while traveling on the business of the commission

shall be paid by the state, such expenditures to be sworn to by the party who incurred the expense and approved by the chairman of the commission or a majority thereof.

POWERS AND DUTIES. — Sec. 11. It shall be the duty of the commission and it shall have power and authority:

(1) To have and exercise general supervision over the administration of the assessment and taxation laws of the state, over assessors, town, county and city boards of review and equalization and all other assessing officers in the performance of their duties to the end that all assessments of property be made relatively just and equal in compliance with the laws of the state.

(2) To confer with, advise and give the necessary instructions and directions to local assessors throughout the state as to their duties under the laws of the state, and to that end call meetings of local assessors of each county, to be held at the county seat of such county for the purpose of receiving necessary instruction from the commission as to the laws governing the assessment and taxation of all classes of property.

(3) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the liability and punishment of public officers and officers and agents of corporations for failure or negligence to comply with the provisions of the laws of this state governing returns of assessment and taxation of property, and to cause complaints to be made against local assessors, members of boards of equalization, members of boards of review or any other assessing or taxing officer, to the proper authority, for their removal from office for misconduct or negligence of duty. To require county attorneys to assist in the commencement of prosecutions in actions or proceedings for removal, forfeiture and punishment for violation of the laws of the state in respect to the assessment and taxation of property in their respective districts or counties.

(4) To require town, city, village, county and other public officers to report information as to the assessment of property, collection of taxes received from licenses and other sources, and such other information as may be needful in the work of the commission, in such form and upon such blanks as the commission may prescribe.

(5) To require individuals, co-partnerships, companies, associations and corporations to furnish information concerning their cap-

ital, funded or other debt, current assets and liabilities, earnings, operating expenses, taxes as well as all other statements now required by law for taxation purposes.

(6) To summon witnesses to appear and give testimony and to produce books, records, papers and documents relating to any tax matter which the commission may have authority to investigate or determine.

(7) To cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken, upon notice to the interested party, if any, in like manner that depositions of witnesses are taken in civil action in the district court in any matter which the commission may have authority to investigate or determine.

(8) One or more members of the commission shall officially visit at least one-half the counties of the state annually, and shall visit every county in the state at least once in two years and inquire into the methods of assessment and taxation and ascertain whether the assessors faithfully discharge their duties, particularly as to their compliance with this act requiring the assessment of all property not exempt from taxation.

(9) To investigate the tax laws of other states and countries and to formulate and submit to the legislature of the state such legislation as said commission may deem expedient to prevent evasions of assessment and taxing laws, and to secure just and equal taxation and improvement in the system of assessment and taxation in this state.

(10) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws in regard thereto, and the progress of the work of the commission, and to furnish the governor, from time to time, such assistance and information as he may require relating to tax matters.

(11) To transmit to the governor on or before the third Monday in December of each even numbered year, and to each member of the legislature on or before Jan. 1st, of each odd numbered year, the report of the commission for the preceding years, showing all the taxable property in the state and the value of the same, in tabulated form.

(12) To exercise and perform such further powers and duties as may be required or imposed upon the commission by law.

BOARD OF EQUALIZATION.—Sec. 12. The said Minnesota tax commission shall have and exercise all the rights, powers and authority by law vested in the state board of equalization, which said board of equalization is hereby continued, with full power and authority to review, modify and revise, all of the acts and proceedings of said commission in so far as they relate to the equalization and valuation of property assessed for taxation, as prescribed by section 863, Revised Laws of 1905, which state board of equalization shall meet on the second Tuesday in September of each year during its existence. The said Minnesota tax commission shall also have the following powers and duties:

(1) To require the auditor of each county in the state to file with the tax commission, on or before the fourth Monday in August each year, complete abstracts of all real and personal property in the county as equalized by the county board of equalization and itemized by assessment districts, said abstracts to be accompanied by a printed or typewritten copy of the proceedings of said county board of equalization, and it shall be the duty of the county auditor to so report to the tax commission.

(2) To order reassessment of all real and personal property or either in any assessment district, when in the judgment of said commission such reassessment is advisable or necessary to the end that any and all classes of property in such assessment district shall be assessed in compliance with the law.

(3) To require county auditors to carefully place upon the assessment rolls, omitted property which may be discovered to have for any reason escaped assessment and taxation in previous years.

(4) To receive complaints and to carefully examine into all cases where it is alleged that property subject to taxation has not been assessed or has been fraudulently or for any reason improperly or unequally assessed, or the law in any manner evaded or violated, and to cause to be instituted such proceedings as will remedy improper or negligent administration of the taxing of the state.

(5) Prior to the sitting of the state board of equalization each year, and subject to review as herein stated, to raise or lower the assessed valuation of any or all real and personal property, or any portion thereof within the state.

Prior to the annual meetings of the state board of equalization, to

raise or lower the assessed valuation of any real and of any personal property in the state, including the right and authority to raise or lower the assessment of the real and personal property of any individual, co-partnership, company, association or corporation, first giving notice to such persons of their intention to do so, which notice shall fix a time and place of hearing, to the end that the assessed valuation of all property throughout the state shall be as nearly equal as may be upon any given class of property.

RECORDS. — Sec. 13. A record of all proceedings of the Minnesota tax commission affecting any change in the assessed valuation of any property, as revised by the state board of equalization, shall be kept by the secretary of the commission and a copy thereof duly certified shall be mailed to the county auditor of each county wherein such property is situated. Which record shall specify the amounts or amount, or both, added to or deducted from the valuation of the real property of each of the several towns, villages and cities, and of the real property not in towns, villages or cities, also the per cent or amount of both, added to or deducted from the several classes of personal property in each of the towns, villages and cities, and also the amount added to or deducted from the assessments of individuals, co-partnerships, associations or corporations. The county auditor shall add to or deduct from such tract or lot or portion thereof, of any real property in his county the required per cent or amount, or both, on the valuation thereof as it stood after equalized by the county board, adding in each case a fractional sum of fifty cents or more, and deducting in each case any fractional sum of less than fifty cents, so that no valuation of any separate tract or lot shall contain any fraction of a dollar; and shall also add to or deduct from the several classes of personal property in his county the required per cent or amount, or both, on the valuation thereof as it stood after equalized by the county board, adding or deducting in manner aforesaid, any fractional sum, so that no valuation of any separate class of personal property shall contain a fraction of a dollar, and shall also add to or deduct from assessments of individuals, co-partnerships, associations or corporations, as they stood after equalization by the county board, the required amounts to agree with the assessments as returned by the Minnesota tax commission.

TAX RATE. — Sec. 14. The county auditor shall calculate the

rate per cent necessary to raise the required amount of the various taxes on the assessed valuation of all property as returned by the Minnesota tax commission.

WITNESSES — HOW SUMMONED. — Sec. 15. Oaths to witnesses in any matter under the investigation or consideration of the commission may be administered by the secretary of the commission or any member thereof. In case any witness shall fail to obey any summons or appear before said commission, or shall refuse to testify or answer any material questions or to produce records, books, papers or documents when required so to do, such failure or refusal shall be reported to the attorney general, who shall thereupon proceed in the proper court to compel obedience to any summons or order of the commission, or to punish witnesses for any such neglect or refusal.

RE-ASSESSMENT — HOW MADE. — Sec. 16. Whenever it shall be made to appear to the tax commission, by verified complaint or by the finding of a court, or of the legislature or either body of the same, or any committee thereof, that any considerable amount of property has been improperly omitted from the tax list and assessment roll of any county for any year or years, or, if assessed, that the same has been grossly undervalued by the assessor or other taxing official, whether or not such assessment has been reviewed by the county or state board of equalization, they shall proceed to reassess such property in the manner prescribed by sections 854 to 858, inclusive, of the Revised Laws of 1905, and for such purpose shall appoint such examiners and deputies as they shall deem necessary, and in fixing their compensation they shall not be limited to the compensation provided for by section 856 of the said Revised Laws. The expenses of such reassessment shall be paid as provided by section 856 of said Revised Laws of 1905.

The terms of office of all members of the state board of equalization now or hereafter appointed shall end on the 31st day of January, 1909, and from and after said time, said state board of equalization shall cease to exist and be discontinued, and thereafter all of the powers and duties now vested by law in said state board of equalization shall devolve upon and be exercised by said Minnesota tax commission.

APPROPRIATION. — Sec. 17. For the purposes of this act there is

hereby annually appropriated out of the treasury of the state, not otherwise appropriated, the sum of thirty thousand dollars (\$30,000).

Sec. 18. All acts or parts of acts inconsistent herewith are hereby repealed.

Sec. 19. This act shall take effect and be in force from and after its passage.

Approved April 25, 1907.

OHIO

[Copy of the Act establishing the Tax Commission of Ohio in 1910, as arranged and published in pamphlet form.]

APPOINTMENT AND TERM OF COMMISSIONERS, SECRETARY, CLERKS, AND OTHER EMPLOYEES

SECTION 1. A tax commission is hereby created, to be known as the tax commission of Ohio, to be composed of three commissioners, electors of the state, not more than two of whom at any time shall be of the same political party. On or before July first, 1910, the governor shall appoint such commissioners as follows: the term of one such appointee, who shall belong to the same political party as one of the other members appointed on such commission, if there be two appointees from the same political party, shall terminate on the second Monday of February, 1911; the term of the second such appointee shall terminate on the second Monday of February, 1912; the term of the third such appointee shall terminate on the second Monday of February, 1913. In February, 1911, and annually thereafter, in the month of February, there shall be appointed in the same manner, one commissioner for the term of three years, from the second Monday of February of such year. Each commissioner so appointed shall hold his office until a successor is appointed and qualified. Any vacancy on the commission shall be filled by appointment of the governor for the unexpired term. No appointee shall be qualified to act until after his appointment has been confirmed by the Senate, unless appointed during a recess or adjournment of the Senate.

SECTION 2. The governor shall at any time, remove any commissioner for inefficiency, neglect of duty, or malfeasance in office.

SECTION 3. Each commissioner and each employee shall devote his entire time to his duties hereunder and shall not hold any position of trust or profit, engage in any occupation or business interfering with or inconsistent with his duties as such commissioner or employee, or serve on or under any committee of any political party.

SECTION 4. The commission shall be in continuous session and open for the transaction of business during all of the business hours of each and every day, excepting Sundays and legal holidays. All sessions shall be open to the public, and the sessions of the commission shall stand and be adjourned without further notice thereof on its records. All of the proceedings of the commission shall be shown on its record of proceedings, which shall be a public record, and all voting shall be by calling each member's name by the secretary, and each member's vote shall be recorded on the record of proceedings as cast.

SECTION 5. Before entering upon the duties of his office, each of said commissioners shall take and subscribe the constitutional oath of office, and shall swear or affirm that he holds no other office of profit or any position under any committee of a political party; which oath or affirmation shall be filed in the office of the governor.

SECTION 6. Each of said commissioners shall receive an annual salary of five thousand dollars payable in the same manner as salaries of state officers are paid.

SECTION 7. The commissioners appointed under this act shall, within twenty days after their appointment and qualification meet at the state capitol and organize. A majority of such commission shall constitute a quorum to transact business and any vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission so long as a majority remains. Any investigation, inquiry or hearing which this commission is authorized to hold or undertake may be held or undertaken by or before any one member of the commission. All investigations, inquiries, hearings and decisions of the commission, and every order made by a commissioner, when approved and confirmed by the commission and so shown on its record of proceedings shall be deemed to be the order of the commission.

SECTION 8. The commission shall be known as The Tax Commission of Ohio and shall have an official seal with the words: "The Tax Commission of Ohio" and such other design as the commission may prescribe engraved thereon, by which it shall authenticate its proceedings and of which the courts shall take judicial notice.

SECTION 9. The commission shall keep its office in the city of Columbus, Ohio, and shall provide a suitable room or rooms, necessary office furniture, supplies, books, periodicals and maps. All necessary expenses shall be audited and paid as other expenses are audited and paid. The commission may hold sessions at any place within the state.

SECTION 10. The commission is authorized to employ a secretary, examiners, experts, clerks, accountants, stenographers and other assistants. Such employments and compensation for the same shall be first approved by the Governor. The commissioners, secretary, experts, clerks, accountants, stenographers and other assistants as may be employed, shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the commission. Such expenses to be itemized and sworn to by the person who incurred the expense and allowed by the commission.

SECTION 12. The commission shall adopt reasonable and proper rules and regulations to govern its proceedings and to regulate the mode and manner of all valuations of real or personal property, apportionments, investigations, inspections and hearings not otherwise specifically provided for.

SECTION 13. The commission may confer and meet with officers of other states and officers of the United States on any matter pertaining to their official duties.

INSPECTIONS AND INVESTIGATIONS

SECTION 14. To carry out the purposes of this act the commission, or any commissioner, or any person or persons employed by the commission for that purpose, shall, upon demand, have the right to inspect the books, accounts, records and memoranda of any public utility, company, corporation or association subject to the provisions of this act, and to examine under oath any officer, agent or employee of any such company, corporation, association or

public utility. Any person, other than one of said commissioners, who shall make such demand, shall produce his authority to make such inspection.

SECTION 15. The commission may require, by order or subpoena to be served on any such company, corporation, association or public utility in the same manner that a summons is served in a civil action in the court of common pleas, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by the same in any office or place within or without the State of Ohio, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction. Any such company, corporation, association or public utility failing or refusing to comply with any such order or subpoena shall, for each day it shall so fail or refuse, forfeit and pay into the state treasury a sum of not less than fifty dollars nor more than five hundred dollars.

SECTION 16. For the purpose of making any investigation with regard to any such company, corporation, association or public utility the commission shall have the power to appoint, by an order in writing, an agent whose duties shall be prescribed in such order.

SECTION 17. In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted in this act to the commission and the same powers as a notary public, with regard to the taking of depositions; and all powers given by law to a notary public relative to depositions are hereby given to such agent.

Except in his report to the commission, or when called on to testify in any court or proceeding, any such agent who shall divulge any information acquired by him in respect to the transactions, property or business of any public utility, while acting or claiming to act under such order, shall be fined not less than fifty dollars nor more than one hundred dollars, and shall thereafter be disqualified from acting as agent or in any other capacity under the appointment or employment of said commission.

SECTION 18. The commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agent the taking of all testimony bearing upon

any investigation or hearing. The decision of the commission shall be based upon its examination of all testimony and records. The recommendations made by such agent shall be advisory only and shall not preclude the taking of further testimony if the commission so order, nor further investigation.

INFORMATION BLANKS, MAPS, PROFILES, ETC.

SECTION 19. Each company, corporation, association or public utility shall furnish to the commission all information required by it to carry into effect the provisions of this act, and shall make specific answers to all questions submitted by the commission.

SECTION 20. Any such company, corporation, association or public utility receiving from the commission any blanks with directions to fill the same, shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question, it shall, in writing, give a good and sufficient reason for such failure; and the answers to such questions shall be verified under oath by the president, secretary, superintendent or general manager of the same, and returned to the commission at its office within the period fixed by the commission.

SECTION 21. Whenever required by the commission for the enforcement of this act, every such company, corporation, association or public utility shall deliver to the commission any or all maps, profiles, contracts, reports of engineers and all documents, books, accounts, papers and records or copies of any or all of the same, with an inventory of all its property, in such form as the commission may direct.

HEARINGS AND INVESTIGATIONS

SECTION 22. Each of the commissioners, the secretary and every agent provided for in this act for the purpose mentioned in this act, shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendances of witnesses and the production of books, accounts, papers, records, documents and testimony.

In case of disobedience on the part of any person or persons to comply with any order of the commission or any commissioner or

any subpoena or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated before the commission, or its agents authorized as provided in this act, it shall be the duty of the court of common pleas of the county in which the person resides, or a judge thereof, on application of a commissioner to compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

SECTION 23. Each officer who serves a summons or subpoena shall receive the same fees as a sheriff, and each witness who shall appear before the commission by its order shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in courts of common pleas, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers approved by the chairman of the commission; provided, that no witness subpoenaed at the instance of parties other than the commission shall be entitled to compensation from the state for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated.

SECTION 24. The commission, or any party, may, in any investigation, cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of common pleas.

SECTION 25. A transcribed copy of the evidence and proceedings, or any specific part thereof, on any investigation, taken by the stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript of all the testimony on the investigation, or of a particular witness, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand, to any party on payment of the fee therefor, as provided for transcripts in courts of common pleas.

SECTION 26. No person shall be excused from testifying or

from producing accounts, books and papers in any proceedings based upon or growing out of any violation of the provisions of this act on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

DEFINITIONS

SECTION 27. The term "commission" when used in this act, means the tax commission of Ohio. The term "commissioner" means one of the members of such commission.

SECTION 121. The term "public utility" as used in this act means and embraces each corporation, company, firm, individual, and association, their lessees, trustees, or receivers elected or appointed by any authority whatsoever, and in this act referred to as express company, telephone company, telegraph company, sleeping car company, freight line company, equipment company, electric light company, gas company, natural gas company, pipe line company, waterworks company, messenger company, signal company, messenger or signal company, union depot company, water transportation company, heating company, cooling company, street railroad company, railroad company, suburban railroad company, and interurban railroad company, and such term "public utility" shall include any plant or property owned or operated, or both, by any of such companies, corporations, firms, individuals or associations.

SECTION 28. Any person, joint stock association or corporation, wherever organized or incorporated, engaged in the business of conveying to, from, or through this state, or part thereof, money, packages, gold, silver, plate or other article, by express, not including the ordinary lines of transportation of merchandise and property in this state, is an express company.

SECTION 29. Any person, joint stock association or corporation, wherever organized or incorporated, engaged in the business of

transmitting to, from, through, or in this state, telegraphic messages, is a telegraph company.

SECTION 30. Any person, joint stock association or corporation, wherever organized or incorporated, engaged in the business of transmitting to, from, through, or in this state, telephonic messages, is a telephone company.

SECTION 39. That any person or persons, joint stock association or corporation, wherever organized or incorporated, engaged in the business of operating cars, not otherwise listed for taxation in Ohio, for the transportation of freight, whether such freight is owned by such company, or any other person or company, over any railway line or lines in whole or part within this state, such line or lines not being owned, leased or operated by such company, whether such cars be termed box, flat, coal, ore, tank, stock, gondola, furniture or refrigerator cars, or by another name, shall be deemed to be a freight-line company. Any person or persons, joint stock association or corporation, wherever organized, or incorporated, engaged in the business of furnishing or leasing cars, of whatsoever kind or description, to be used in the operation of any railway line or lines, wholly or partially within this state, such line or lines not being owned, leased or operated by such company, and such cars not being otherwise listed for taxation in Ohio, shall be deemed to be an equipment company. Any person or persons, joint stock association or corporation, wherever organized or incorporated, engaged in the business of operating cars, not otherwise listed for taxation in Ohio, for the transportation, accommodation, comfort, convenience or safety of passengers, on or over any railway line or lines, in whole or part within this state, such line or lines not being owned, leased or operated by such company, whether such cars be termed sleeping, palace, parlor, chair, dining or buffet-cars, or by another name, shall be deemed to be a sleeping-car company.

SECTION 46. That any person or persons, firm or firms, joint stock association or corporation, wherever organized or incorporated, engaged in the business of supplying electricity for light, heat or power purposes, to consumers within this state, is an electric light company; when engaged in the business of supplying artificial gas for lighting or heating purposes to consumers within this state, is a gas company; when engaged in the business of supplying nat-

ural gas for lighting, heating or power purposes to consumers within this state, is a natural gas company; when engaged in the business of transporting natural gas or oil through pipes or tubing, either wholly or partially, within this state, is a pipe line company; when engaged in the business of supplying water, through pipes or tubing, or in a similar manner to consumers within this state, is a water works company; when engaged in the business of operating a street, suburban or interurban railroad, wholly or partially within this state, whether the cars used in such business are propelled by animals, steam, cable, electricity, or other motive power, is a street, suburban or interurban railroad company; when engaged in the business of supplying messengers, or of signalling or calling by electrical apparatus, or in a similar manner, for any purpose, is a messenger or signal company; when engaged in the business of operating a union depot or station for railroad or interurban railroad purposes, is a union depot company; when engaged in the business of operating a railroad, either wholly or partially within this state, on rights of way acquired and held exclusively by such company or otherwise, is a railroad company; when engaged as a common carrier in the transportation of passengers or property, by boat or other water craft, over any waterway, whether natural or artificial, from one point within this state to another point within this state, or between points within this state and points without the the state, shall be deemed to be a water transportation company; when engaged in the business of supplying water, steam, or air through pipes or tubing, to consumers within the state, for heating or for cooling purposes, is a heating, or a cooling company.

ASSESSMENT OF EXPRESS, TELEGRAPH AND TELEPHONE COMPANIES

SECTION 31. Every express, telegraph and telephone company defined in the last three preceding sections of this act, doing business in this state shall, between the first and thirty-first days of May annually, under the oath of the person constituting such company, if a person, or under the oath of the president, secretary, treasurer, superintendent or chief officer in this state of such association or corporation, if an association or corporation, make and file with the commission a statement, in such form as the commission may prescribe.

SECTION 32. Such statement shall contain :

1. The name of the company.
2. The nature of the company, whether a person or persons, or association or corporation, and under the laws of what state or country organized.
3. The location of its principal office.
4. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager.
5. The name and post office address of the chief officer or managing agent of the company in Ohio.
6. The number of shares of the capital stock.
7. The par value and market value, or if there is no market value, the actual value of its shares of stock on the first day of May.
8. A detailed statement of the real estate owned by the company in Ohio, where situate, and the value thereof as assessed for taxation.
9. A full and correct inventory of the personal property, including moneys and credits, owned by the company in Ohio on the first day of May, where situate, and the value thereof.
10. The total value of the real estate owned by the company and situate outside of Ohio.
11. The total value of the personal property, owned by the company and situate outside of Ohio.
12. In the case of telegraph and telephone companies, the whole length of their lines, and the length of so much of their lines as is without and is within the state of Ohio, which shall include the lines said telegraph and telephone companies control and use under lease or otherwise and the miles of wire in each taxing district in Ohio.
13. In the case of telephone, telegraph and express companies, the entire gross earnings of the company, from whatever source derived, for the year ending the first day of May, of business wherever done.
14. In the case of telephone, telegraph and express companies, the gross earnings for the year ending the first day of May, from whatever source derived, of each office within the state of Ohio, and the total gross earnings of the company for such period in Ohio.
15. In the case of express companies, the whole length of the lines of rail and water routes, over which the company did busi-

ness on the first day of May, and the length of so much of such lines of land and water transportation as is without and within Ohio, naming the lines within Ohio.

16. Such other facts and information as the commission may require in the form of returns prescribed by it.

SECTION 33. Blanks for making such statement shall be prepared, and, on application, furnished to any such company by the commission. Express, telegraph and telephone companies shall not be required to make returns under, nor be governed by the provisions of section fifty-four hundred and four, fifty-four hundred and five and fifty-four hundred and six of the General Code.

SECTION 34. On the first Monday in June the commission shall ascertain and assess the value of the property of the express, telegraph and telephone companies in Ohio. In determining the value of the property of such companies in this state, to be taxed within the state and assessed as herein provided, said commission shall be guided by the value of the property as determined by the value of the entire capital stock of the companies, and such other evidence and rules as will enable said commission to arrive at the true value in money of the entire property of said companies within the state of Ohio, in proportion which such property bears to the entire property of the companies, as determined by the value of the capital stock thereof and the other evidence and rules as aforesaid.

SECTION 35. Before the assessment of the property of any express, telephone or telegraph company is determined, any company or person interested shall have the right, on written application, to appear before the commission and be heard in the matter of the valuation of the property of any company for taxation. After the assessment of the property of any such company for taxation by the commission, and before the certification by the commission of the apportioned valuation to the several counties, the commission may, on the application of any interested person or company, or on its own motion, correct the assessment or valuation of the property of any such company, in such manner as will, in its judgment, make the valuation thereof just and equal. The commission shall have and may exercise all the powers possessed by county auditors under Sections fifty-three hundred and ninety, fifty-three hundred and ninety-seven, fifty-three hundred and ninety-eight, fifty-three

hundred and ninety-nine, fifty-four hundred, fifty-four hundred and one, fifty-four hundred and two and fifty-four hundred and three of the General Code; and said express, telegraph and telephone companies shall be subject to all the provisions and penalties of said sections.

SECTION 36. The commission shall deduct from the total value of the property of each of said companies in Ohio, the value, as assessed for taxation, of any real estate situate in Ohio and owned by such company. The value of the property of telegraph and telephone companies in Ohio, after deducting the value of the real estate, shall be apportioned by the commission among the several counties through or into which the lines of such telegraph or telephone companies run, so that to each county shall be apportioned such part of the entire valuation as will equalize the relative value of the property of the company therein, in proportion to the whole value of the property of the company in the state, and in the proportion that the length of the lines of wire owned by the company in the county bears to the whole length of the lines of wires in the state.

SECTION 37. The value of the property of any express company shall be apportioned by the commission among the several counties in which the company does business, in the proportion that the gross earnings in each county bear to the entire gross earnings in the state.

SECTION 38. The commission shall, on or before the fifteenth day of August, certify to the county auditor the amount apportioned to his county, and the county auditor, upon receiving such certificate shall apportion the amount therein stated among the cities, villages, townships or other taxing districts, after the same method used for the apportionment of the valuation in the state among the counties. The county auditor shall place the apportioned valuation on the tax duplicate, and taxes shall be levied and collected thereon at the same rate and in the same manner as taxes are levied and collected on other personal property in the taxing district in question.

SLEEPING CAR, FREIGHT LINE AND EQUIPMENT COMPANIES

SECTION 40. Every sleeping-car, freight-line and equipment company doing business or owning cars which are operated in this

state shall, annually, between the first and thirty-first days of May, under the oath of the person constituting such company, if a person, or under the oath of the president, secretary, treasurer, superintendent or chief officer in this state of such association or corporation, if an association or corporation, make and file with the commission a statement, in such form as the commission may prescribe.

SECTION 41. Such statement shall contain:

1. The name of the company.
2. The nature of the company, whether a person or persons, or association or corporation, and under the laws of what state or country organized.
3. The location of its principal office.
4. The name and post-office address of the president, secretary, auditor, treasurer, and superintendent or general manager.
5. The name and post-office address of the chief officer and managing agent of the company in Ohio.
6. The number of shares of capital stock.
7. The par and market value, or, if there is no market value, the actual value of the shares of stock on the first day of May.
8. A detailed statement of the real estate owned by the company in Ohio, where situate, and the value thereof as assessed for taxation.
9. The total value of the real estate owned by the company and situate outside of Ohio.
10. The whole length of the lines of railway over which the company runs its cars, and the length of so much of such lines as is without and is within the state of Ohio.

SECTION 42. In the case of an equipment company, such statement shall also contain the whole number and value of the cars owned and leased by the company, classifying the cars according to kind; the whole length of the lines of railway, wherever located, operated by the companies, naming them, to which cars owned by such equipment company are leased, and the length of so much of said lines as is without and within the state of Ohio, giving the name and location of the lines wholly or partially within the state of Ohio.

SECTION 43. Blanks for making the above statement shall be prepared, and on application, furnished any company by the commission. Sleeping-car, freight-line and equipment companies shall

not be required to make returns, and shall not be governed by the provisions of sections fifty-four hundred and four, fifty-four hundred and five and fifty-four hundred and six, of the General Code.

SECTION 44. The commission shall ascertain and determine, on or before the second Monday in August, the amount and value of the proportion of the capital stock of sleeping-car, freight-line and equipment companies, representing capital and property of such companies owned and used in Ohio, and in determining the same, shall be guided in each case by the proportion of the capital stock of the company representing rolling-stock, which the miles of railroad over which such company runs cars, or its cars are run in Ohio, bear to the entire number of miles in Ohio and elsewhere over which such company runs cars, or its cars are run, and such other rules and evidence as will enable the commission to determine, fairly and equitably, the amount and value of the capital stock of such company representing capital and property owned and used in the state of Ohio. Before the amount and value of the capital stock of any company representing capital and property owned and used in Ohio is determined, any company or person interested shall have the right, on written application, to appear before the commission and be heard in the matter of such determination. After fixing the amount and value of the capital stock of any company representing capital and property owned and used in Ohio, and before the certification to the auditor of state of such amount, the commission may, on the application of any person or company interested, or on its own motion, review and correct its action in such manner as it may deem just and proper.

SECTION 45. The commission shall on the first Monday in September of each year report to the auditor of state, who shall charge the amount in the nature of an excise tax charged and to be collected from each sleeping-car, freight-line and equipment company doing business or owning cars which are operated in this state, computed by taking one and two-tenths per cent. of the amount fixed by the commission as the value of the portion of the capital stock representing the capital and property of each company owned and used in Ohio after deducting the value of the real estate of the company in Ohio assessed and taxed locally if any there be. It shall be the duty of the auditor of state, on or before the first day of October,

annually, to certify to the treasurer of state as herein provided for collection from each sleeping-car, freight-line and equipment company doing business or owning cars which are operated in this state, the amount so charged.

EXCISE TAX — PUBLIC UTILITIES

SECTION 47. Each public utility except railroad companies doing business in this state shall, annually, on or before the first day of August, and each such railroad company shall, annually, on or before the first day of October under the oath of the person constituting such company, if a person, or under the oath of the president, secretary, treasurer, superintendent or chief officer in this state, of such association or corporation, if an association or corporation, make and file with the commission a statement, in such form as the commission may prescribe.

SECTION 48. The statement, provided in the preceding section, shall contain:

1. The name of the company.
2. The nature of the company, whether a person or persons or association or corporation and under the laws of what state or country organized.
3. The location of its principal office.
4. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager.
5. The name and postoffice address of the chief officer or managing agent of the company in Ohio.
6. Such other facts and information as the commission may require in the form of return prescribed by it.

SECTION 49. In the case of express companies, such statement shall also contain the entire receipts, including all sums earned or charged, whether actually received or not, for business done within this state, giving the name of the office, for the year then next preceding the first day of May, for and on account of such company, including its proportion of gross receipts for business done by such company within this state in connection with other companies, excluding therefrom all receipts derived wholly from interstate business or business done for the federal government. Such statement shall also contain the total amount of receipts for business done within this state.

SECTION 50. In the case of telegraph and telephone companies, such statement shall also contain the entire gross receipts, including all sums earned or charged, whether actually received or not, for the year then next preceding the first day of May, from whatever source derived, whether messages, telephone tolls, rentals, or otherwise, for business done within this state, excluding therefrom all receipts derived wholly from interstate business or business done for the federal government. Such statement shall also contain the gross receipts of each office within this state, giving the name of the office; also the total of such gross receipts of the company for such period in this state from such business done within this state.

SECTION 51. In the case of each railroad, such statement shall also contain the entire gross earnings, including all sums earned or charged, whether actually received or not, for the year then next preceding the 30th day of June, from whatever source derived, for business done within this state, excluding therefrom all earnings derived wholly from interstate business or business done for the federal government; such statement shall also contain the gross earnings of each office within this state, giving the name of the office; also the total gross earnings of such company for such period in this state from such business done within this state.

SECTION 52. In the case of each street, suburban or interurban railroad, such statement shall also contain the entire gross earnings, including all sums earned or charged, whether actually received or not, for the year then next preceding the first day of May, from whatever source derived, for business done within this state, excluding therefrom all earnings derived wholly from interstate business or business done for the federal government. Such statement shall also contain the gross earnings of each office within this state, giving the name of the office; also the total of such gross earnings of such company for such period in this state from such business done within this state.

SECTION 53. In the case of all public utilities except railroads, street, suburban and interurban railroads, such statement shall also contain the entire gross receipts of the company, including all sums earned or charged, whether actually received or not, for business done within this state for the year next preceding the first day of May, including the company's proportion of gross receipts for busi-

ness done by it within this state in connection with other companies, firms, corporations, persons or associations, but this shall not apply to receipts from interstate business, or business done for the federal government.

SECTION 54. Blanks for making such statements shall be prepared by the commission, and, on application, furnished by it to any electric light, gas, natural gas, pipe line, water-works, street, suburban or interurban railroad, express, telegraph, telephone, messenger or signal, union depot, railroad, heating, cooling and water transportation company.

SECTION 55. The commission shall ascertain and determine, on or before the first day of September, the entire gross receipts as aforesaid, of each electric light, gas, natural gas, pipe line, water-works, express, telegraph, telephone, messenger or signal, union depot, heating, cooling and water transportation company for business done within Ohio for the year then next preceding the first day of May, excluding therefrom all receipts derived wholly from interstate business or business done for the federal government. The amount so ascertained by the commission, in such instance for the purposes of this act, shall be the gross receipts of such electric light, gas, natural gas, pipe line, waterworks, express, telegraph, telephone, messenger or signal, union depot, heating, cooling, water transportation companies for business done within Ohio for such year.

SECTION 56. The commission shall also ascertain and determine, on or before the first day of November, the gross earnings as provided in this act, of each railroad company whose line is wholly or partially within this state, for the year then next preceding the 30th day of June. The amount so ascertained by the commission shall be the gross earnings of such railroad company for such year.

SECTION 57. The commission shall also ascertain and determine, on or before the first day of September, the gross earnings as provided in this act, of each street, suburban and interurban railroad company whose line is wholly or partially within this state, for the year then next preceding the first day of May. The amount so ascertained by the commission shall be the gross earnings of such street, suburban, or interurban railroad company for such year.

SECTION 58. Before the gross receipts or earnings of any such

public utility are determined, any company or person interested, shall have the right on written application, to appear before the commission and be heard in the matter of such determination.

SECTION 59. After the determination of the amount of the gross receipts or earnings of any such public utility, and before the report to the auditor of state of such amount, as provided in this act, the commission may, on the application of any person or company interested, or on its own motion, review and correct its findings.

SECTION 60. The commission shall, on or before the first day of October, report to the auditor of state, the amount of the gross receipts so determined, of electric light, gas, natural gas, pipe line, water-works, express, telegraph, telephone, messenger or signal, union depot, heating, cooling and water transportation companies, and the amount of the gross earnings so determined of each street, suburban, interurban railroad company, for the year then next preceding the first day of May. On or before the fifteenth day of November the commission shall report to the auditor of state the amount of the gross earnings determined as aforesaid, of each railroad company for the year then next preceding the 30th day of June.

SECTION 61. It shall be the duty of the auditor of state, in the month of October, annually, to charge for collection from each electric light, gas, natural gas, water-works, telephone, messenger or signal, union depot, heating, cooling and water transportation company, a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported by the commission as the gross receipts of such company on its intra-state business for the year then next preceding the first day of May, by taking one and two-tenths per centum of all such gross receipts.

SECTION 62. In the month of October, the auditor of state, shall charge for collection from each street, suburban and interurban railroad company, a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported to him by the commission as the gross earnings of such company on its intra-state business for the year then next preceding the first day of May, by taking one and two-tenths per centum of all such gross earnings.

SECTION 63. In the month of October, the auditor of state, shall charge for collection from each express and telegraph company, a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported to him by the commission as the gross receipts of such company on its intra-state business for the year then next preceding the first day of May, by taking two per centum of all such gross receipts.

SECTION 64. In the month of November, the auditor of state shall charge for collection from each railroad company, a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported to him by the commission, as the gross earnings of such company on its intra-state business for the year then next preceding the 30th day of June, by taking four per centum of all such gross earnings.

SECTION 65. In the month of November, the auditor of state shall charge for collection from each pipe-line company, a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported to him by the commission, as the gross receipts of such company on its intra-state business for the year then next preceding the first day of May by taking four per centum of all such gross receipts.

SECTION 66. After determining the amount of taxes payable to the state as provided in this act, the auditor of state shall thereupon prepare proper duplicates and reports, and certify the same to the treasurer of state for collection. At the time of so certifying, he shall notify the companies charged therewith of the amount due. The treasurer of state shall proceed to collect the same and render a daily itemized statement to the auditor of state of the amount of tax collected and the name of the company from whom collected, under all the provisions of this act.

ASSESSMENT OF PUBLIC UTILITIES OTHER THAN EXPRESS, TELEGRAPH AND TELEPHONE COMPANIES

SECTION 72. Between the first and fifteenth days of January in the year 1911, and within the same time of each year thereafter, a statement shall be delivered to the commission, in such form as

the commission may prescribe, by each public utility, as defined in this act, other than express, telegraph and telephone companies, with respect to such utility's plant or plants, and all property owned or operated, or both, by it wholly or in part within this state. Such statement shall be signed and sworn to under the oath of the person constituting such public utility, if a person, or under the oath of the president, secretary, treasurer, superintendent or principal accounting officer or person of such firm, association or corporation, if a firm, association or corporation; and such statement shall contain:

1. The name of the company.
2. The nature of the company, whether a person or persons, firm, association or corporation, and under the laws of what state or country organized.
3. The location of its principal office.
4. The name and postoffice address of the president, secretary, auditor, the principal accounting officer or person, treasurer, and superintendent or general manager.
5. The name and postoffice address of the chief officer or managing agent of the company in Ohio.
6. The number of shares of the capital stock.
7. The par value and market value, or if there is no market value, the actual value of its shares of stock on the first day of the month of January in which the statement is made; the amount of capital stock subscribed, and the amount thereof actually paid in.
8. A detailed statement of the real estate owned by the company in Ohio, where situate, and the value thereof as assessed for taxation, making separate statements of that part used in connection with the daily operations of the company, and that part used otherwise if any such there be.
9. A full and correct inventory of the personal property, including moneys, investments and credits, owned by the company in Ohio on the first day of the month of January in which the statement is made, where situate, and the value thereof, making separate statements of that part used in connection with the daily operations of the company, and that part used otherwise if any such there be.
10. The total value and a general description of the real estate owned by the company and situate outside of Ohio, giving the loca-

tion of the same, making separate statements of that part used in connection with the daily operations of the company, and that part used otherwise if any such there be.

11. A description or inventory and the total value of the personal property owned by the company and situate outside of Ohio, giving the location thereof, making separate statements of that part used in connection with the daily operations of the company, and that part used otherwise if any such there be.

12. The total amount of bonded indebtedness and of indebtedness not bonded; the gross receipts for the preceding calendar year from any and all sources, and the gross expenditures for the preceding calendar year, giving a detailed statement thereof under each class or head of expenditures.

13. In the case of street, suburban or interurban railroad companies, and railroad companies, such statement shall also give:

(a) The whole length of their lines and the length of so much of their line as is without and is within the State of Ohio, including branches in and out of the state, which shall include lines and branches said companies control and use under lease or otherwise.

(b) The railway track in each county in the state, through which it runs; giving the whole number of miles of road in the county, including the track and its branches and side and second tracks, switches, and turnouts therein, and the true and actual value per mile of such railway in each county, stating the valuation of main track, second or other main tracks, branches, sidings, switches and turnouts, separately.

(c) Such statement as to character, classes, number, amounts, values, locations, ownership or control and use of rolling stock, as the commission may require.

(d) The depots, station houses, section houses, freight houses, machine and repair shops and machinery therein, and all other buildings, structures and appendages connected thereto or used therewith, including tool houses, and the tools usually kept therein, together with telegraph and telephone lines owned or used, and the true and actual value of all buildings and structures, and all such machinery, tools and appendages, including such telegraph and telephone lines, and the true and actual value thereof in each county in this state in which it is located.

(e) The gross earnings for the year, including earnings from telegraph lines, which shall be stated separately, on the whole length of the road, including the branches thereof, in and out of the state, and also such earnings within the state on way freight and passengers.

14. In the case of pipe line, gas, natural gas, water-works and heating or cooling companies, such statement shall also show:

(a) The number of miles of pipe line owned, leased or operated within this state, the size or sizes of the pipe composing such line, and the material of which such pipe is made;

(b) If such pipe line be partly within and partly without this state, the whole number of miles thereof within this state and the whole number of miles without this state, including all branches and connecting lines in and out of the state;

(c) The length, size and true and actual value of such pipe line in each county of this state, including in such valuation the main line, branches and connecting lines, and stating the different values of the pipe separately;

(d) Its pumping stations, machine and repair shops and machinery therein, tanks, storage tanks and all other buildings, structures and appendages connected or used therewith, including telegraph and telephone lines and wires, and the true and actual values of all such stations, shops, tanks, buildings, structures, machinery, and appendages and of such telegraph and telephone lines, and the true and actual value thereof in each county in this state in which it is located; and the number and value of all tank cars, tanks, barges, boats and barrels.

15. In addition to the facts and information herein specifically required to be given, such statement shall contain any and all other facts and information which the commission may require, and in the form of returns prescribed by the commission.

SECTION 73. Between the fifteenth day of January and the fifteenth day of May of each year, the commission shall ascertain and assess at its true value in money all the property in this state of each such public utility subject to the provisions of this act, other than express, telegraph and telephone companies. In determining the value of the property of such public utility, to be assessed and taxed within the state, the commission shall be guided by the value of

the property as determined by the information contained in the sworn statements made by the public utility to the commission and such other evidence and rules as will enable it to arrive at the true value in money of the entire property of the said public utility within this state, in the proportion which the value of such property bears to the value of the entire property of the said public utility. The property of such public utilities to be so assessed by the commission, shall be all the personal property thereof, which shall include all real estate necessary to the daily operations of the public utility and moneys and credits within this state.

SECTION 74. The commission shall give notice to each public utility referred to in the last preceding section hereof, ten days before such property will be assessed of the time and place where such value will be ascertained. Before the assessment of said property, each of said public utilities shall have the right, upon written application, to appear before the commission and be heard in the matter of the valuation of its said property for taxation. After the assessment of the property of any such public utility for taxation by the commission, and before the certification by it of the apportioned value to the county, or to the several counties as herein provided, the commission may, on the application of any such public utility or any person interested therein, or on its own motion, correct the assessment or valuation of its property, in such manner as will, in its judgment, make the valuation thereof just and equal.

The commission shall have and may exercise all the powers possessed by county auditors under sections fifty-three hundred and ninety, fifty-three hundred and ninety-seven, fifty-three hundred and ninety-nine, fifty-four hundred, fifty-four hundred and one, fifty-four hundred and two and fifty-four hundred and three of the General Code, and all such public utilities shall be subject to all the provisions and penalties of said sections. The commission shall deduct from the total value of the property of each of said public utilities in Ohio, as assessed by it, the value of the real or personal property owned by said public utilities, if any there be, otherwise valued and assessed for taxation in Ohio, and shall justly and equitably equalize the relative values thereof.

SECTION 75. The commission shall ascertain all of the personal property, which shall include road bed, stations, power houses, poles,

wires, water and wood stations and other realty necessary to the daily running operations of the road, moneys and credits of each railroad company and each suburban or interurban railroad company, having any line, or road, or part thereof in this state and the undivided profits, reserved or contingent fund of the company, whether in moneys, credits, or in any manner invested, and the actual value thereof in money, and also locomotives, motors, and cars not belonging to the company, but hired for its use or run under its control on its road by a sleeping car company or other company. Such rolling stock not belonging to it, but under its control, may be returned by such public utility separate from its own property, and if so returned the commission shall fix the valuation of such property separately, but must include the amount in the aggregate valuation.

SECTION 76. The commission shall within twenty days after the valuation of any such public utility has been determined make a certified copy of its findings in full with reference to each public utility and forward the same to the county auditor, in each county, having any property of the said companies within his county. Such county auditors shall record the same in a book to be kept for that purpose, which said book and the certified copy of such findings shall be open to public inspection during all business hours. The county auditor shall place the apportioned value on the tax duplicate and taxes shall be levied and collected thereon, in the same manner and at the same rate as other personal property in the taxing district in question.

SECTION 77. The value of such property, moneys and credits, of each of said companies, as found and determined by the commission, shall be apportioned by the commission among the several counties through which the road, or any part thereof, runs, so that to each county and to each taxing district therein, shall be apportioned such part thereof as will equalize the relative value of the real estate, structures, and stationary personal property of such company therein, in proportion to the whole value of the real estate, structures and stationary personal property of the company in this state; and so that the rolling stock, main track, road bed, power houses, poles, wires, supplies, moneys and credits, of the company shall be apportioned in like proportion that the length of the road

in such county, bears to the entire length thereof in all the counties, and to each city, village, and district or part thereof therein. If the line of such company is divided into separate divisions or branches, so much of the rolling stock thereof as belongs to, or is used solely upon any such divisions or branches shall be apportioned in like manner to the county, or counties, and to each taxing district therein, through which such branch or division runs. The commission shall certify to each such county auditor such apportionment.

SECTION 78. When a public utility has part of its road in this state and part thereof in another state or states, the commission shall take the entire value of such property, moneys, and credits of such public utility so found and determined, in accordance with the provisions of this act, and divide it in the proportion the length of the road in this state bears to the whole length thereof, and determine the principal sum for the value of the road in this state accordingly, equalizing the relative value thereof in this state.

SECTION 79. The commission shall, within twenty days after the valuation of any public utility other than express, telegraph, telephone and railroad companies, suburban or interurban railroad companies, apportion the value of the property of all other public utilities according to the provisions of this act, as follows:

(a) When all the property of said public utility is located within the limits of a county, the assessed value thereof shall be apportioned by the commission between the several taxing districts therein, in the proportion which the property located within the taxing district in question, bears to the entire value of the property of said public utility as ascertained and valued as herein provided, so that, to each taxing district there shall be apportioned such part of the entire valuation as will fairly equalize the relative value of the property therein located to the whole value thereof.

(b) When the property of said public utility is located in more than one county in this state, the assessed value thereof shall be apportioned by the commission between the several counties and the taxing districts therein, in the proportion which the property located therein, bears to the entire value of the property of said public utility as ascertained and valued as herein provided, so that to each county and each taxing district therein, there shall be apportioned such part of the entire valuation as will fairly equalize

the relative value of the property therein located to the whole value thereof.

(c) When the property of said public utility required to be assessed by the provisions of this act, is located in more than one state, the assessed value thereof shall be apportioned by the commission in such manner as will fairly and equitably determine the principal sum for the value thereof in this state, and after ascertaining the same it shall be apportioned by the commission, as herein provided.

REMISSION OF TAXES

SECTION 80. The commission may remit taxes and penalties thereon, found by it to have been illegally assessed, and such penalties as have accrued or may accrue in consequence of the negligence or error of an officer required to perform a duty relating to the assessment of property for taxation, or the levy or collection of taxes. It may correct an error in an assessment of property for taxation or in the duplicate of taxes in a county. No such taxes, assessments or penalties in excess of one hundred dollars shall in any case be remitted until after at least ten days' notice of the application to have the same remitted shall have been served upon the prosecuting attorney and the county auditor of the county where such taxes or assessments were levied, and proof of such service has been filed with the commission.

When any taxes or penalties have been remitted as provided in this section the commission shall make a report of the same to the auditor of state. It may receive complaints and carefully examine into all cases where it is alleged that property subject to taxation has not been assessed or has been fraudulently or for any reason improperly or unfairly assessed, or the law in any manner evaded or violated, and may cause to be instituted such proceedings as will remedy improper or negligent administration of the taxation laws of the state.

GENERAL POWERS OF COMMISSION RELATING TO TAXATION

SECTION 81. The commission shall prepare and transmit to the auditors of the several counties such forms of returns to be made by them to its office, and such instructions as it deems conducive to the best interests of the state upon a subject affecting taxation, or

the construction of any statute affecting taxation the execution of which devolves upon any county or local officer. It shall see that all laws concerning the valuation and assessment of all classes of property, and the collection of taxes thereon are faithfully obeyed. It shall issue such orders and instructions to the different taxing officers as will carry into effect the provisions of law relating to taxation and shall enforce the same agreeably to the provisions of this act. Each such officer shall obey and observe all such orders and instructions, and upon failure shall be subject to the penalties herein provided.

It shall order a re-assessment of the real or personal property in any taxing district, when in the judgment of said commission such property has not been assessed at its true value in money, to the end that all classes of property in such taxing district shall be assessed in compliance with the law. When a re-assessment is ordered in any taxing district the commission shall appoint an appraiser or board of appraisers who shall forthwith proceed to re-assess such property in such taxing district and who shall have all the powers, shall perform all the duties and shall receive the same compensation from the same sources as provided by law for assessors of real or personal property as the case may be. It shall require county auditors to place upon the tax duplicate any property which may be found to have, for any reason, escaped assessment and taxation.

It may raise or lower the assessed value of any real or personal property, first giving notice to the owner or owners thereof fixing a time and place for hearing any person or persons interested to the end that the assessment laws of the state may be equitably administered. Said hearing shall in case of realty be had within the county in which said realty is situated, and in case of personalty within the county wherein the owner thereof resides if a natural person residing in this state.

For the purpose of protecting the public interest the commission is authorized to appear and upon its application entitled to be heard in any court or tribunal in any proceeding in which an abatement of taxes is sought. It shall be the duty of the clerk of any court of record in this state to immediately transmit to the commission by registered letter a copy of the petition filed in any action in which an abatement of taxes, assessed by the commission, is sought, and charge the fee therefor in the costs.

County auditors and all local officers shall observe and use such forms and obey such instructions.

FRANCHISE TAX ON CORPORATIONS

SECTION 82. Each corporation organized under the laws of this state, for profit, shall make a report in writing to the commission, annually, during the month of May, in such form as the commission may prescribe. The report shall be signed, and sworn to before an officer authorized to administer oaths, by the president, vice-president, secretary, or general manager of the corporation, and forwarded to the commission.

SECTION 83. Such report shall contain:

1. The name of the corporation.
2. The location of its principal office.
3. The names of the president, secretary, treasurer, and members of the board of directors, with the postoffice address of each.
4. The date of the annual election of officers.
5. The amount of authorized capital stock and the par value of each share.
6. The amount of capital stock subscribed, the amount of capital stock issued and outstanding, and the amount of capital stock paid up.
7. The nature and kind of business in which the corporation is engaged and its place or places of business.
8. The change or changes, if any, in the above particulars made since the last annual report.

SECTION 84. Upon the filing of the report provided in sections 82 and 83 of this act, the commission, after finding such report to be correct, shall report to the auditor of state, who shall charge and certify to the treasurer of state for collection on or before July fifteenth as herein provided, from such corporation a fee of three-twentieths of one per cent, upon its subscribed or issued and outstanding capital stock, which fee shall not be less than ten dollars in any case.

FOREIGN CORPORATIONS FOR PROFIT

SECTION 85. Each foreign corporation for profit, doing business in this state, and owning or using a part or all of its capital

or plant in this state, and subject to compliance with all other provisions of law, and in addition to all other statements required by law, shall make a report in writing to the commission, annually, during the month of July, in such form as the commission may prescribe.

The report shall be signed, and sworn to before an officer, authorized to administer oaths, by the president, vice-president, secretary, superintendent or managing agent in this state, and forwarded to the commission.

SECTION 86. Such report shall contain:

1. The name of the corporation and under the laws of what state or country organized.
2. The location of its principal office.
3. The names of the president, secretary, treasurer and members of the board of directors, with the postoffice address of each.
4. The date of the annual election of officers.
5. The amount of authorized capital stock, and the par value of each share.
6. The amount of capital stock subscribed, the amount of capital stock issued, and the amount of capital stock paid up.
7. The nature and kind of business in which the company is engaged and its place or places of business, both within and without the state.
8. The name and location of its office or offices in this state, and the name and address of the officers or agents of the corporation in charge of its business in this state.
9. The value of the property owned and used by the company in this state, where situated, and the value of the property owned and used outside of this state, and where situated.
10. The change or changes, if any, in the above particulars made since the last annual report.

SECTION 87. Upon the filing of the report provided for in the last two preceding sections the commission, from the facts thus reported and any other facts coming to its knowledge bearing upon the question, shall determine the proportion of the authorized capital stock of the company represented by its property and business in this state, on or before September first, and shall report the same to the auditor of state, who shall charge and certify to the treas-

urer of state on or before October first, for collection, as herein provided, annually, from such company, in addition to the initial fees otherwise provided for by law, for the privilege of exercising its franchises in this state one-tenth of one per cent. for the year 1910 and three-twentieths of one per cent. for each year thereafter upon the proportion of the authorized capital stock of the corporation represented by property owned and used and business transacted in this state, which fee shall not be less than ten dollars in any case.

CORPORATIONS NOT FOR PROFIT

SECTION 88. Each corporation organized under the laws of this state, not for profit, and having no capital stock, shall make a report in writing to the commission, annually, during the month of November, in such form as the commission may prescribe. The report shall be signed, and sworn to before an officer authorized to administer oaths, by the president, vice-president, secretary or other chief officer of the corporation, and forwarded to the commission.

SECTION 89. Such report shall contain:

1. The name of the corporation.
2. The location of its principal office.
3. The names of the president, secretary, treasurer and members of the board of trustees, or directors, with postoffice address of each.
4. The date of the annual election of officers.
5. The object or purpose which such corporation is engaged in carrying out.

SECTION 90. Upon the filing of such report, as provided in the last two preceding sections, the commission shall report to the auditor of state, on or before December first, who shall charge and certify to the treasurer of state on or before January first, for collection, as herein provided, a fee of ten dollars from each corporation, organized as a mutual insurance corporation, not having a capital stock, or any other mutual corporation not organized strictly for benevolent or charitable purposes and having no capital stock, or of a company or association organized to transact the business of life or accident, or life and accident insurance on the assessment plan for the purpose of mutual protection and relief to its members and the payment of stipulated sums of money to the family, heirs,

executors, administrators, or assigns of the deceased member thereof.

SECTION 91. Upon the filing of the report, provided for in sections eighty-eight and eighty-nine of this act, the commission shall report to the auditor of state, on or before December first, who shall charge and certify to the treasurer of state on or before January first, for collection, as herein provided one dollar from each corporation formed for religious, benevolent or literary purposes, or of such corporations as are not organized for profit, have no capital stock, and are not mutual in their character, or of religious or secret societies or associations composed exclusively of any class of mechanics, express, telegraph, railroad or other employees, formed exclusively for the mutual protection and relief of the members thereof and their families.

SECTION 92. Upon the filing of the report and the payment of the fee provided for in sections eighty-two to one hundred inclusive of this act to the treasurer of state, the auditor of state shall make out and deliver to the corporations so paying, a certificate of the compliance by such corporations with said sections of this act, and the payment of the annual fee therein provided for. The auditor of state shall make a report monthly to the commission of the annual fees so collected.

MISCELLANEOUS PROVISIONS

SECTION 98. The secretary of state shall prepare and keep a correct list of all corporations subject to the provisions of sections eighty-two to one hundred inclusive of this act, and engaged in business within this state, and shall on the first day of July, 1910, certify a copy of said list to the commission, and shall monthly thereafter file with the commission a certified report showing all new corporations, the increase or decrease of the capital stock, or the dissolution of existing corporations and such other information as the commission may require. For the purpose of obtaining necessary information the secretary of state or the commission shall have access to the records of the offices of the county auditors of the state.

SECTION 101. Electric light, gas, natural gas, water-works, pipe line, street railroad, suburban or interurban railroad, steam rail-

road, messenger, union depot, express, freight line, sleeping car, telegraph, telephone, and other public utilities required by law to file annual reports with the commission, and insurance, fraternal beneficial, building and loan, bond investment and other corporations required by law to file annual reports with the superintendent of insurance shall not be subject to the provisions of sections eighty-two to ninety-two inclusive of this act.

SECTION 102. A corporation shall not be required to file its first annual report under sections eighty-two to one hundred inclusive of this act until the proper month hereinbefore provided for the filing of such report, next following the expiration of six months from the date of its incorporation or admission to do business in this state.

EQUALIZATION OF BANK SHARES

SECTION 103. The commission shall have authority to increase or decrease the value of the shares of incorporated banks and also the shares of unincorporated banks the capital stock of which is divided into shares each of which shares is an aliquot part of the capital so divided, and of the property representing the capital employed by unincorporated banks the capital stock of which is not divided into shares and for this purpose it shall on the third Tuesday of June, annually, examine the returns of said banks to the county auditors and the value of said shares and of the property representing the capital employed as fixed by the county auditors, as the same shall have been reported by the county auditors which report shall be made to the commission.

SECTION 104. The commission shall hear complaints and increase or decrease the value of said shares and property representing capital employed, if in the judgment of the commission, the value of all the bank property so reported to the commission by the county auditors is not its true value in money.

SECTION 105. The commission forthwith after such valuation is made, shall certify to the auditors of the proper counties, the valuations of the shares of, and property representing capital employed by banks situated in such counties, which valuation shall be placed upon the proper tax duplicate.

QUADRENNIAL STATE BOARD OF EQUALIZATION

SECTION 106. Each county auditor, on or before the first Monday of November, 1910, and every fourth year thereafter, shall make and transmit to the commission an abstract of the real property of each taxing district in his county, in which he shall set forth the value thereof as returned by the assessors, with such additions as have been made thereto.

SECTION 107. The commission shall, on or before the first day of April following, determine whether the real property of the several counties, cities, villages and taxing districts in the state shall have been assessed at its true value in money, and if, in the opinion of the said commission, the real property which any county, city, village or taxing district in the state, as reported by the said auditors to said commission, is not on the duplicate at its true value in money, the said commission may increase or decrease the valuation in such county, city, village or taxing district by such rate of per cent. or by such amount as will place said property on the duplicate at its true value in money.

SECTION 108. When the commission has determined the true value of the real property in the several taxing districts the commission shall transmit to each county auditor a statement of the amount to be added or deducted from the valuation of the real property of each taxing district in his county, specifying the amount to be added to or deducted from the valuation of the real property of each of the several taxing districts. The county auditor shall forthwith add to or deduct from each tract or lot of real property in his county, the required per cent. or amount on the valuation thereof, as it stands, after it has been equalized by the county and city boards of equalization, adding or deducting, in each case, any sum less than five dollars, so that the value of any separate tract or lot shall be ten dollars or some multiple thereof.

GENERAL PROVISIONS

SECTION 11. Upon the request of the commission, it shall be the duty of the attorney general, or, under his direction, the prosecuting attorney of the proper county, to aid in any investiga-

tion, hearing or trial had under the provisions of this act, and to institute and prosecute the necessary actions or proceedings for the enforcement of this act and for the punishment of all violations thereof.

SECTION 67. Nothing contained in this act shall exempt or relieve electric light, gas, natural gas, pipe line, waterworks, street, suburban or interurban railroad, express, telegraph, telephone, messenger or signal, union depot, railroad, heating, cooling and water transportation companies from the assessment and taxation of their property in the manner authorized and provided by law.

SECTION 68. All taxes received by the treasurer of state under the provisions of this act, shall be credited to the general revenue fund. If any public utility fail or refuse to pay on or before the fifteenth day of December the tax assessed against it, the treasurer of state shall certify the list of such utilities so delinquent to the auditor of state, who shall add to the tax due a penalty of fifteen per cent. thereon, and forthwith certify the same to the attorney general for collection. The attorney general shall forthwith proceed to collect the same, and the amount so collected shall be paid into the state treasury, and credited to the general revenue fund. Suits for the collection of such tax may be brought in the name of the State, in Franklin county, or in any county in which such public utility is doing business, or the line of any street, suburban or interurban railroad company or railroad company is located.

SECTION 69. In case the tax herein authorized to be charged and collected against any class of companies defined in this act, shall for any reason, be declared invalid, such invalidity shall in no wise effect the validity of the law, as applicable to any other class or classes of companies provided in this act, nor shall the abrogation or repeal of any section or clause of this act be held to abrogate or repeal any other section or clause thereof.

SECTION 70. During the month of November of each year, the commission shall file with the secretary of state a written statement containing the name of each company which has complied with the provisions of this act during the year next preceding, and such facts respecting it within its knowledge which are required by law to be annually filed with the secretary of state by corporations other than those included within the provisions of this act.

SECTION 71. This act shall not be construed so as to require any municipal corporation within the state to make any return or pay any taxes under any provision of this act.

SECTION 93. The fees, taxes and penalties required to be paid by this act, shall be the first and best lien on all property of the corporation, whether such property is employed by the corporation in the prosecution of its business or is in the hands of an assignee, trustee or receiver for the benefit of the creditors and stockholders thereof.

SECTION 97. If a corporation organized under the laws of Ohio, for profit or not for profit, required to file the report and pay the fee prescribed in this act, fails or neglects to make such report or pay such fee for three months after the expiration of the time limited by this act, and such default is wilful and intentional, the attorney general, on the request of the commission, shall bring an action in the circuit court of Franklin county, or any county in this state in which such corporation is located, to forfeit and annul the charter of such corporation.

If the court is satisfied that such default is wilful and intentional it may revoke and annul such charter.

SECTION 99. Any county auditor, upon request of the secretary of state or commission, shall furnish such information as is shown by the records of his office concerning corporations located within his county, and subject to the provisions of this act. The commission for the purpose of determining the amount of fees due from such corporation, may investigate and determine the facts showing the proportion of the authorized capital stock of the company represented by its property and business in this state.

SECTION 100. Any corporation may be heard by the commission upon the question of the amount of fees or penalties due to the state from it under the provisions of this act, and its decision in the matter shall be final.

SECTION 109. The commission shall cause to be prepared suitable blanks for carrying out the purposes of this act, and shall, when necessary, furnish such blanks to each public utility, company, corporation, association, or individual, subject thereto.

SECTION 114. If any public utility, company, corporation or association, subject to the provisions of this act, fails or refuses

to make out and deliver to the commission any statement required by this act, or furnish the commission with any information requested, the commission shall inform itself as best it may on the matters necessary to be known in order to discharge its duties under this act.

SECTION 115. All powers, duties and privileges imposed and conferred upon any state board, which board is by this act abolished or its powers and duties in whole or in part conferred upon this commission, or any power or duty which has heretofore been conferred upon any state or county officer or board, which power and duty is hereby conferred upon the commission, is hereby imposed and conferred upon the commission created by this act; provided, that the powers and duties so transferred by this act shall continue to be exercised under existing laws until such time as the commission hereby created has been appointed and qualified; provided further that the auditor of state, treasurer of state, attorney general and secretary of state shall constitute a board of appraisers and assessors with the power to appoint boards of review in municipalities as provided in sections fifty-six hundred and eighteen to fifty-six hundred and twenty-four inclusive of the General Code.

SECTION 116. The commission shall whenever called upon by any officer, board or commission now existing or hereafter created, of the state or any political division thereof, furnish any data or information to such officer, board or commission, and shall so far as possible aid and assist such officer, board or commission in performing the duties of his or its office. All state, county and local officers shall make and forward to the commission upon its written order, such transcripts of records, or parts thereof and other information on file in their respective offices or in their possession, as are deemed necessary by the commission to properly and effectually carry into operation the provisions of this act.

SECTION 117. Each section of this act and every part of each section is hereby declared to be independent sections and parts of sections and the holding of any section or part thereof to be void or ineffective for any cause shall not be deemed to affect any other section or any part thereof.

SECTION 118. Every order or notice provided for in this act, shall be served upon every person or corporation to be affected

thereby, either by personal delivery of a certified copy thereof, or by mailing a certified copy thereof by registered mail, to the person to be affected thereby, or in the case of a corporation, to any officer or agent thereof upon whom a summons may be served. Within the time specified in the order of the commission every person or corporation upon whom it is served if so required in the order shall notify the commission in like manner whether the terms of the order are accepted and will be obeyed.

SECTION 119. No injunction shall issue suspending or staying any order of the commission, except upon application to the court or a judge thereof, and upon notice to the commission and a hearing.

SECTION 120. In addition to the other remedies provided by this act for the prevention and punishment of any violation of the provisions hereof and all orders of the commission, the commission may compel compliance with the provisions of this act and of the orders of the commission, by proceedings in mandamus, injunction or by other appropriate civil remedies.

SECTION 122. The commission shall annually on or before the fifteenth day of December, make and deliver to the governor, a full report of the operation and execution of all laws which it is herein required to administer, one thousand copies of which shall be printed in book form for the use of the General Assembly and the public. The board shall report to the governor and General Assembly its recommendations of such changes and alterations as in its opinion should be made in the tax laws of this state.

PENALTIES AND OFFENSES

SECTION 94. If a corporation, other than public utility, required to file a report and pay the fee prescribed in this act, fails or neglects to make such report as required herein or pay such fee within thirty days after the same has been certified to the treasurer for collection, it shall be subject to a penalty of fifteen per cent. of the amount of the fee required to be paid by it.

SECTION 95. Such penalty or penalties and the annual fee or fees to be paid as provided in this act may be recovered by an action in the name of the state, and on collection shall be paid into the state treasury to the credit of the general revenue fund.

SECTION 96. The attorney general, on request of the commis-

sion, shall institute such action in the court of common pleas of Franklin county, or any county in the state in which such corporation has an office or place of business.

SECTION 110. Any officer, agent or employee of any public utility, company, corporation or association subject to the provisions of this act who shall fail or refuse to fill out and return any blanks as required by this act, or shall fail or refuse to answer any questions therein propounded, or shall knowingly or wilfully give a false answer to any such question where the fact inquired of is within his knowledge or who shall, upon proper demand, fail or refuse to exhibit to the commission or any commissioner or any person authorized to examine the same, any book, paper, account, record or memoranda of such public utility, which is in his possession or under his control, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars for each offense.

And a penalty of not less than five hundred dollars nor more than one thousand dollars shall be recovered from the public utility for each such offense when such officer or agent or employee acted in obedience to the direction, instruction or request of such public utility, company, corporation or association or any general officer thereof.

SECTION 111. Whoever violates any provision of this act, or neglects or refuses to perform any duty herein required, for which a penalty has not otherwise been provided, or neglects or refuses to obey any lawful requirement or order made by the commission, for every such violation, failure or refusal shall be fined not less than twenty-five dollars nor more than one thousand dollars for each offense. In construing and enforcing the provisions of this section the act, omission or failure of any officer, agent or other person acting for or employed by any public utility, company, corporation or association acting within the scope of his employment shall in every case be deemed to be the act, omission or failure of such public utility, company, corporation or association.

SECTION 112. Whoever, being a member of the commission, or an assessor or a member of a county board of equalization, or a person whose duty it is to list, value, assess or equalize real or personal property for taxation, shall knowingly or wilfully fail to

list or return for assessment or valuation any real estate or personal property, or knowingly or wilfully lists or returns for assessment or valuation any real or personal property at any other than its true value in money, or shall wilfully or knowingly fail to equalize any real or personal property according to its true value in money, shall be fined not less than fifty dollars nor more than five hundred dollars and in addition thereto, if he be an officer, shall forfeit his office or position.

SECTION 113. Every day during which any public utility, company, corporation, association, officer, or individual subject to the provisions of this act, or any officer, agent or employee thereof shall wilfully fail to observe and comply with any order or direction of the commission or to perform any duty enjoined by this act, shall constitute a separate and distinct offense.

REPEALS

SECTION 123. That said original sections, 258, 5415 to 5431 inclusive, 5445 to 5542 inclusive and 5602 to 5617 inclusive, of the General Code, be and the same are hereby repealed. This act shall in no manner affect existing causes of action or pending actions, proceedings or prosecutions. This act shall take effect and be in force on and after July 1st, 1910, but the commission may be appointed and organize before said date as provided in sections one to ten inclusive of this act.

NEW JERSEY

An Act to abolish the state board of taxation and to create in lieu thereof a board for equalization, revision, review and enforcement of tax assessments.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. There shall be established a board for the equalization, revision, review and enforcement of taxation, to be called the Board of Equalization of Taxes of New Jersey, which shall consist of a president, who shall be a counsellor-at-law, and four associate members, who shall all be appointed by the Governor, by and with

the advice and consent of the senate. Their term of office shall commence on the first Monday of April, and shall be for a period of five years, except as hereinafter provided in reference to the associate members thereof first appointed hereunder, and each member before entering upon the discharge of his duties shall file with the secretary of state an oath that he will faithfully discharge the duties of his office. The president shall receive an annual salary of five thousand dollars, and each associate member shall receive an annual salary of three thousand five hundred dollars, which salaries shall be payable monthly, and shall be in lieu of any allowance for expenses. The said board, immediately after its organization, shall appoint a clerk, whose term shall be for five years and whose salary shall be two thousand five hundred dollars a year, payable monthly; the expenses of said clerk actually incurred in the prosecution of his duties, when certified to by the president of said board, shall likewise be paid by the treasurer, on the warrant of the comptroller; said board shall also have the power to employ such other clerical assistants as it shall deem necessary, who shall be paid such reasonable compensation as shall be fixed by its members, and approved by the governor. Immediately after the organization of said board, its associate members shall by lot determine which of said associate members shall continue in office for four years, which for three years, which for two years and which for one year; and thereupon their terms shall be for the period thus resulting and a minute thereof shall be deposited with the secretary of state.

2. The said board shall keep a full record of its proceedings, and have the power to make rules, orders and directions as it may deem necessary to carry into effect the objects of this act. It shall have the power to compel the attendance of witnesses and the production of books and papers before it, and it may examine witnesses, or cause witnesses to be examined before it, under oath, which any of its members may administer, and in case of the failure of any person or corporation to obey any such order of the said board he, she or it shall be liable to be punished as for contempt by said board as hereinafter provided. The said board may, as occasion shall require, by order, refer to one or more of its members the duty of taking testimony in any matter pending before it, and report there-

on to the board, but no determination shall be made therein except as herein provided.

3. In case it shall, by written complaint of any taxing district or any county in this State, appear that any other taxing district or any other county that is by taxes contributing to a common cause with such complainant, is by inequality of valuation or otherwise avoiding or escaping from its fair share of the common burden, the said board shall thereupon cause an investigation of such complaint to be made, and shall render such aid and assistance as it may be able to give for the purpose of arriving at a fair and equitable adjustment of values of both real and personal property of any and every kind, and belonging to any person or corporation whatsoever, including such property of railroad and canal companies as contributes to such common cause; to this end the said board may examine any assessor or board or assessments, under oath, as to his or their assessments, both as to the valuation as a whole and as to any particular piece of property or as to any property omitted from assessment, and may inquire by the testimony of witnesses concerning the same, and if it shall deem proper it may make a personal examination of any property in any taxing district or county, for the purpose of equalizing assessments between such districts or between counties bearing a common burden of taxation. If it shall appear that the value of any property contained in any taxing district or county, including railroad and canal property bearing such common burden, is relatively less than the value of any other property contributing by taxation to a common burden, or that property, real or personal, that should be assessed therefor has been omitted from assessment, the said board may, after giving the notice hereinafter provided, for the purpose of fixing or adjusting the proportion or quota of taxes to be levied as aforesaid, after a comparison of the values, or a like examination as to any omissions from the tax ratables, add thereto such sum or amount as shall seem equitable, and to be warranted by such comparison and examination; or if it shall appear to said board upon such investigation that the assessment of any property lying in any such taxing district or county, including such property of any railroad or canal company, and taxed for a common benefit, is greater than the true value thereof, it may, for the purpose afore-

said, in order to equalize the valuations throughout the territory which contributes to the common burden, reduce said assessment to the amount of the true value of the property therein, and at the same time make such increases in the valuation as shall be warranted and as herein provided, and the said board may further, in any year in which such reduction or increase is made and the tax rate has already been fixed, in order to do justice, equitable equalize the assessment of any piece or pieces of property. Before any change shall be made in value the assessors of the taxing district in which the change is proposed and the owner of such property shall be notified in writing that the said board proposes to make the same, and he shall be directed to show cause, at a time and place to be in said notice designated, before the board why the said change should not be made; such notice shall be sufficient if published in one of the newspapers circulating in the county, at least five days before such hearing, and mailed to the postoffice address of such assessor and owner or served personally on them, at least five days before such hearing. When the several taxes shall be amended in the particulars aforesaid, the taxes for said district shall be levied and collected based upon the said corrected valuation.

4. It shall be the duty of the said board to investigate the method adopted by local assessors in the assessment of real and personal property in this State, to furnish the local assessors information to aid them in making assessments, to examine all cases where evasion of proper taxation is alleged, and to ascertain wherein existing tax laws are defective or are improperly or negligently administered; it shall annually report to the legislature, particularly specifying any means or practices or devices used for the evasion of proper taxation, and it shall annually submit to the legislature such recommendations as it may find necessary to prevent the evasion of just and equal taxation; and from time to time also report to the legislature what changes, if any, it considers should be made either in the laws governing the method of taxation or any change of the rate of tax upon property of any person or corporation, including railroad and canal companies, in order to produce equality of taxation.

5. Where complaint shall be made to said board in writing, verified by the oath of any complainant, on or before the first day of

April following the assessment of property of any kind, whether belonging to individuals, corporations, railroads or canals, said board shall have power to review and correct the action of the local assessors or other taxing officers and of all boards of tax review, by reducing or increasing such assessment, and the corrected tax shall bear interest from the time fixed by the law under which said tax was originally levied until paid; *provided, however*, said board shall have power at any time, on application of the property owner or owners, with the consent of the mayor or assessor of the municipality affected, to correct errors, mistakes or omissions in the assessment of any persons or corporations.

6. When the said board has reason to believe from information or otherwise, that any property, including the property of railroad and canal companies, has been assessed at a rate lower than is consistent with the purpose of securing uniform and true valuation of property for the purpose of taxation, the said board shall have the power, after due investigation, to increase the assessment made upon such property; and for this purpose, if necessary, may direct an assessor or other taxing officer to make a reassessment of such property, according to the rules which the said board shall establish, and if such assessor or other taxing officer shall fail or refuse to comply with the order so given, the board shall have power to appoint some other person to make the new assessment under the direction of the board; and the assessment so made and affirmed by the board shall be and be deemed to be the assessment of such property for the year. The board may also assess and add to the tax list and duplicate any property omitted, and may correct misnomers or other errors in assessments on notice to parties concerned.

7. It shall be the duty of the board to meet from time to time as it shall deem proper, and any taxpayer feeling himself aggrieved by the apportionment of taxes against the taxing district wherein he is taxed, or any taxing district aggrieved by the action of the county board of assessors of equalization, may, within such time as such board shall by rule prescribe, file a petition of appeal to the board setting forth therein the cause of complaint and asking relief, and the board shall make such order respecting the procedure in such case as to it shall seem just; and shall hear summarily, and determine such complaints and revise and correct

the apportionment of taxes and the determination of such county board of assessors or of equalization by fixing the amount each taxing district shall raise, in just proportion according to the true value of the taxable property therein, and the assessment so corrected and determined by said board shall be final and conclusive; such corrected rate of assessment shall be certified by said board to the collector of the taxing district where such property is taxable, and shall be collected in the same manner that other taxes in said taxing district are collected.

8. When complaint shall be made in writing to the board by the board of chosen freeholders of any county in this state, or by the governing body of any taxing district that the taxable property of any county has been undervalued or omitted by the assessors therein, it shall be the duty of the board to investigate the assessment of the property subject to taxation in such county complained of; the board shall certify and file the result of every such investigation in the office of the state superintendent of public instruction and in the office of the comptroller of the state, and shall in such certificates specify, first, whether substantially all the real and personal property in each county so investigated has been listed, assessed and valued, and if not all, what percentage; second, whether or not such property subject to taxation has been assessed and valued by the respective assessors and taxing officers in such county at substantially its true value, and if not at such value at what percentage of such value; third, what should be the valuation of the property, both real and personal, in each county investigated; and such determination of the proper valuation on the part of the board shall for all purposes of the state comptroller, the state superintendent of public instruction and the state board of education be deemed to be the true valuation of each county or counties investigated, until otherwise determined by the board under the provisions of this act. For such investigation the board may disburse as may be necessary, not exceeding for any one county the sum of one hundred dollars, which shall be paid by the state treasurer from any fund available for that purpose, upon their filing in his office a certificate specifying in detail the items of such disbursements.

9. The determination of any matter brought before said board

shall be evidenced by a judgment duly signed by at least three of its members, and filed with its clerk; copies thereof, duly certified by said clerk, shall be evidence in any cause or proceeding. When the said board shall be satisfied that any person, officer or corporation has failed to comply with its said judgment, although fully apprised thereof, it shall have full power, upon procedure and rules to be adopted by it, to attach such delinquent for contempt and to punish accordingly.

10. The State Board of Taxation created by section thirty-two of an act of the legislature of the State of New Jersey entitled "An act for the assessment and collection of taxes," approved April eighth, one thousand nine hundred and three, and the supplements thereto, approved February first, one thousand nine hundred and four, be and the same is hereby abolished, and all offices and positions arising thereunder or depending thereon be and the same are hereby vacated, but all proceedings heretofore commenced and now pending before said State Board of Taxation shall continue before and be determined by the board hereby established, which board is hereby vested with full power and authority to determine the same, as if they had been commenced before it.

11. In case for any reason any section or any provision of this act shall be questioned in any court, and shall be held unconstitutional or invalid, the same shall not be held to affect any other sections or provisions of this act.

12. All acts and parts of acts inconsistent herewith be and the same are hereby repealed, but said repealer shall not revive any laws heretofore repealed.

13. This act shall take effect immediately.

Approved March 29, 1905.

WEST VIRGINIA

[Law establishing the office of State Tax Commissioner as found in a pamphlet, entitled *Assessment Laws*, published in 1909.]

Sec. 1. The office of state tax commissioner is hereby created. The governor, by and with the advice and consent of the senate, shall appoint as state tax commissioner some citizen of this state

entitled to vote, whose term of office shall begin at the date of appointment, and shall continue for six years and until the successor to such commissioner is appointed and qualified, unless he be sooner removed, but who shall not be eligible for re-appointment. The person so appointed shall make the oath or affirmation prescribed by section five of article four of the constitution, and such oath shall be certified by the person who administers the same and shall be filed in the office of the secretary of state. He shall give bond with good security, to be approved by the governor, in the penalty of five thousand dollars, and such bond shall also be filed in the office of the secretary of state. The governor may remove such officer in case of incompetence, neglect of duty, gross immorality or malfeasance in office, and in case of a vacancy, whether occurring by reason of removal or otherwise, may declare the office vacant, and fill the same by appointment for the unexpired term. The salary of the state tax commissioner shall be four thousand dollars a year. He shall be repaid his actual disbursements for traveling expenses, not exceeding one thousand dollars in any one year, an itemized account of which shall be filed with the auditor, to be audited by him before payment thereof. He shall be provided with an office in the capitol, and with such furniture and clerical assistance as shall be necessary.

Sec. 2. It shall be the duty of the state tax commissioner to see that the laws concerning the assessment and collection of all taxes and levies, whether of the state or of any county, district or municipal corporation thereof, are faithfully enforced. To this end he shall advise the auditor in the preparation of all proper forms and books for the use and guidance of assessors, and shall perform all such other duties as may be required by law. He shall from time to time visit the several counties and municipal corporations of the state, shall inspect the work of the several assessors, justices, prosecuting attorneys, clerks of courts, sheriffs, constables and collecting officers, among whom are included commissioners of school lands and shall confer with them respecting such work for the future. In such conference, or by writing or otherwise, he may inquire into the proceedings of any such officer, make to him such suggestion respecting the discharge of his duty as may seem proper, and give such information and require such action as will tend

to produce full and just assessments throughout the state, and the diligent collection of all taxes and levies, including licenses and collateral inheritance taxes, and of fines. Upon the application of any officer, concerned with the assessment or collection of taxes, he shall as to any matter specified by such officer make like suggestions and give like information. In case of the failure of any assessing or collecting officer in the discharge of any duty, imposed upon him by law, the said tax commissioner shall proceed to enforce such penalty as may be provided by law, including in any proper case the removal of such officer, and to that end he is authorized to appear before any court or tribunal having jurisdiction. He may cause any violation of laws respecting the assessment or collection of taxes to be prosecuted. He may also be heard before any court, council or tribunal, in any proceeding in which an abatement of taxes is sought.

Sec. 3. The state tax commissioner shall attend meetings of the board of public works when it is considering matters of assessment or revenue, when requested by said board or the governor to so attend, and he shall give such assistance to the said board as it or the governor may direct, in making any assessment to be made by it. In case of appeal to any court from any assessment, made by the said board, the state tax commissioner shall appear before any court and protect the interest of the state and of any county, district or municipal corporation which may be interested. He shall perform such duties relating to the insurance of public buildings and other property of the state as may be required by the governor, and he shall upon the request of the auditor or treasurer, assist such officer in any matters relating to the revenues of the state.

Sec. 4. In every case in which the state tax commissioner may appear the prosecuting attorney of the county in which the case is pending shall give his assistance, without additional compensation.

Sec. 5. The state tax commissioner shall make a report in writing to the governor biennially, on or before the first day of October next preceding the regular session of the legislature, and at such other times as the governor may require, in which he shall show his official transactions during the period not covered by any preceding report; shall give information respecting the operation of the tax laws throughout the state; shall recommend such changes

in the laws concerning the assessment and collection of taxes, and kindred subjects, as he may think ought to be made, and shall report upon any special matter which may be referred to him by the governor, auditor or board of public works; his report shall be printed and communicated to the legislature, and be distributed as other like reports are distributed. To the end that the state tax commissioner may have complete and statistical information as to the practical operation of the tax laws, he may require from any county, district, municipal or other officer in this state, on forms prescribed by the state tax commissioner, such annual or other reports as shall enable said state tax commissioner to ascertain the assessed valuations and equalized valuations of all property listed for taxation throughout the state, the amount of taxes assessed, collected and returned delinquent and such other matter as the state tax commissioner may from time to time require; any officer or person failing to furnish such information or reports when requested to do so by the state tax commissioner shall be guilty of a misdemeanor, and upon conviction thereof, fined not less than fifty dollars nor more than one hundred dollars, and may be confined in jail not less than ten nor more than thirty days.

APPENDIX C

COUNTY ASSESSMENT

The problem of how to secure uniform assessment of property through a system of centralized administration received much attention at the Fourth International Conference on State and Local Taxation. The paper entitled *Taxation Work in West Virginia*, by T. C. Townsend, State Tax Commissioner of West Virginia, was especially instructive. West Virginia has a system of county assessment which was recently placed under the close supervision of a competent State tax commissioner. As a logical result, it appears that the total tax rate for all purposes — State, county, and local — has been reduced from 25.5 1-3 mills in 1904 to 8.45% mills in 1908.

In Kansas, county assessment and a capable tax commission have been able to accomplish similar results. In fact a rather animated debate took place at the Milwaukee Conference as to which State, Kansas or West Virginia, had the lowest tax rate. In the "round table" discussion of administrative problems, the excellent work of these States seemed to be the topic of greatest interest. It was apparent that Kansas and West Virginia with their systems of county assessors have been able to accomplish vastly more than Wisconsin and Minnesota in that all important task of uniform assessment for the simple reason that the tax commissions of the latter States are attempting the impossible task of working through the medium of hundreds of township officials. This fact was frankly admitted by the Chairman of the Minnesota Tax Commission, who said that they were going to renew their efforts to secure county assessment, the bill providing for the same having been defeated at the last session of their General Assembly. The point was clearly established that it is possible and practicable for a State Tax Commission to exercise close and efficient supervision over a hundred county assessors, but that it is impossible to do so in the case of two thousand township assessors.

The contrast between Minnesota and Wisconsin on the one hand and Kansas and West Virginia on the other, in the administration of the general property tax, makes this conclusion inevitable. The writer returned from the Milwaukee Conference thoroughly convinced that county assessment is a necessary part of any efficient system of fiscal administration. The discussions of the Conference furnished an abundance of evidence tending to substantiate the plan of administrative reform outlined in the text. For more specific data along this line the reader is referred to the volume on *State and Local Taxation* for 1910 (now in press) which contains all the papers, reports, discussions and resolutions of the Fourth International Conference on State and Local Taxation held at Milwaukee, Wisconsin, August 30, 31, and September 1, 2, 1910.

DATA RELATIVE TO THE COUNTY ASSESSOR SYSTEMS IN VARIOUS STATES

ALABAMA — Elected for four years. Paid by State and county — on State tax, not exceeding \$12,000, 8% on first \$1,000, 4% on second, 2% on remainder; exceeding \$12,000, same up to \$12,000, 1½% on up to \$60,000, 1% on remainder. Same on county tax. Fees in addition.

ARIZONA — In certain counties, appointed by board of supervisors for four years. Salary varies, according to class of counties, from \$1,200 to \$2,400. Subject to removal by board of supervisors; vacancy filled by board.

ARKANSAS — Elected for four years. Paid, half by State and half by county, for each name listed, 20 cents; for each property list to unknown, \$1.00.

CALIFORNIA — Elected for four years.

COLORADO — Elected for two years. Salary varies, according to class of county, from \$800 to \$4,600. Paid quarterly. Subject to removal by governor, upon complaint. Vacancy filled by county commissioners.

FLORIDA — Elected for two years. Paid by State and county — on State tax, 10% on first \$4,000, 5% on next \$3,000, 1½% on balance. Same on county tax.

GEORGIA — Elected for two years. Salary, 3% on first \$1,000 and a decreasing per cent on each additional amount; on excess above \$36,000, five-eighths of 1%. Is also tax collector. Removable by governor.

IDAHO — Elected for two years. Salary, fixed by board of county commissioners, between \$800 and \$3,000. Subject to removal by board of county commissioners. Vacancy filled by same. Ex-officio collector.

ILLINOIS — In certain counties, appointed by county board for one year. Salary fixed by county board. Subject to removal by judge of court of competent jurisdiction at his discretion. Vacancy filled by county board.

INDIANA — Elected for four years. Salary varies with the population of counties, from \$600 to \$1,900. Paid quarterly. Annual State meeting, for three days, at call of State tax commission.

KANSAS — Appointed by board of county commissioners for two years. Salary, in counties of 25,000 or less, \$5 a day; 25,000-40,000, \$900 a year; above 40,000, \$1,200. Meet at least once a year with tax commission at latter's call.

KENTUCKY — Elected for four years. Salary, in counties where assessment does not exceed \$1,000,000, 4½ cents on each \$100 listed; in others, 4 cents on each \$100 up to a million, and 1¼ cents on balance, not to exceed \$4,000 a year.

LOUISIANA — Elected for four years. Paid, in proportion to amount received, by State, parish, school board, etc. — 4% on first \$50,000, 2% on excess. For levee taxes, \$100. Total never to be less than \$400.

MARYLAND — Elected for two years. Salary, \$3 per day and 10 cents mileage.

MISSISSIPPI — Elected for four years. Paid by State and county — on State rolls, 5% on total, not to be less than \$500 for each roll or more than \$1,500 for the two. The board of supervisors may allow additional fees.

MISSOURI — Elected for four years. Paid half by State and half

by county — 25 cents per name for first 1,000, 20 cents second 1,000, 15 cents each additional. Subject to removal by county court. Vacancy filled by same.

MONTANA — Elected for two years.

NEBRASKA — Elected for four years. Salary varies according to population. Counties of 5,000 or less, \$250, up to those of 100,000 or more, \$2,400. Removable by State board of equalization and assessment. Vacancy filled by county board.

NEVADA — Elected for two years. Salary fixed by acts of counties. Meet with governor annually, not exceeding ten days.

NEW MEXICO — Elected for two years. Salary, 4% of money collected on assessment. Removable upon conviction by judge of district court. Vacancy filled by board of county commissioners.

OREGON — Elected for four years. Salary fixed for counties by statute, ranging from \$1,000 to \$3,000.

SOUTH DAKOTA — In certain counties, elected for two years. Salary, \$4 per day. Population of \$20,000 or more, not to exceed \$1,750. Paid by State.

TENNESSEE — Elected for four years. Salary, population of 60,000 to 120,000, \$2,500; over 120,000, \$4,000; in other counties, fixed by county court within certain limits.

TEXAS — Elected for two years. Salary, 5 cents for each \$100 of first \$2,000,000, 2¼ cents on up to \$5,000,000, and balance 1.7 cents. Five cents for each poll. State pays poll and half of other; county, balance.

UTAH — Elected for two years. Salary fixed by board of county commissioners, not to exceed sum varying according to classes from \$300 to \$1,800. Paid monthly.

VIRGINIA — Appointed by circuit courts for five years. Salary, \$2 per day. Removable by court of appointment.

WASHINGTON — Elected for two years. Salary varies with class of county, from \$2,200 for 1st class, to \$1,200 for 8th class; below 8th class, \$5 per day.

WEST VIRGINIA — Elected for four years. Salary, \$30 per each 100 voters for first 3,000, \$25 per each 100 up to 3,000 more, etc.; not to exceed \$2,100, nor to be under \$1,000.

WYOMING — Elected for two years. Salary, varying by classes from \$800 to \$1,500.

APPENDIX D
SUBSTITUTES FOR THE PERSONAL PROPERTY
TAX

THE MORTGAGE REGISTRY TAX OF MINNESOTA

[Copied from the *Tax Laws of Minnesota*, 1908, pp. 145-148.]

251. **REGISTRY TAX** — A tax of fifty cents is hereby imposed upon each hundred dollars, or major fraction thereof, of the principal debt or obligation which is, or in any contingency may be, secured by any mortgage of real property situate within the state, which mortgage is recorded or registered on or after April 30, 1907; provided, that if any such mortgage shall describe any real estate situate outside of this state, such tax shall be imposed upon such proportion of the whole debt secured thereby as the value of the real estate therein described situate in this state bears to the value of the whole of the real estate described therein, as such value shall be determined by the state auditor upon application of the mortgagee.

252. **IN LIEU OF ALL OTHER TAXES** — All mortgages upon which such tax has been paid, with the debts or obligations secured thereby and the papers evidencing the same, shall be exempt from all other taxes; but nothing herein shall exempt such property from the operation of the laws relating to the taxation of banks, savings banks, or trust companies; provided, that this act shall not apply to mortgages taken in good faith by persons or corporations whose personal property is expressly exempted from taxation by law, or is taxed upon the basis of gross earnings, or other methods of commutation in lieu of all other taxes.

253. **MORTGAGES IN TRUST** — If a mortgage is made to a mortgagee in trust, to secure the payment of bonds or other obligations to be issued thereafter, a statement may be incorporated therein of the amount of such obligations already issued or to be issued forthwith, and the tax to be paid on filing such mortgage for record or

registration shall be computed upon the amount so stated. Such statement shall be binding and conclusive upon all persons claiming through or under the mortgage, and no such obligation issued in excess of the aggregate so fixed shall be valid for any purpose unless the additional tax thereon be paid and the receipt of the proper county treasurer therefor be endorsed thereon.

254. **REGISTRY TAX — HOW PAID** — The tax imposed by this act shall be paid to the treasurer of the county in which the mortgaged land or some part thereof is situated, at or before the time of filing the mortgage for record or registration. The treasurer shall endorse his receipt on the mortgage, countersigned by the county auditor, who shall charge the amount to the treasurer, and such receipt shall be recorded with the mortgage, and such receipt of the record thereof shall be conclusive proof that the tax has been paid to the amount therein stated, and shall authorize any register of deeds to record the mortgage. Its form in substance shall be "registration tax hereon of dollars paid." If the mortgages be exempt from taxation the endorsement shall be "exempt from registration tax," to be signed in either case by the treasurer as such, and in case of payment to be countersigned by the auditor. In case the treasurer shall be unable to determine whether a claim of exemption should be allowed the tax shall be paid to the clerk of the district court of the county to abide the order of such court made upon motion of the county attorney, or of the claimant upon notice as required by the court. When any such mortgage covers real property situate in more than one county in this state the whole of such tax shall be paid to the county treasurer of the county where the mortgage is first presented for record or registration, and the payment shall be receipted and countersigned as above provided, and such tax shall be divided and paid over by the county treasurer receiving the same on or before the tenth day of each month after receipt thereof to the county or counties entitled thereto in the ratio which the assessed value of the real property covered by the mortgage in each county bears to the assessed value of all the property described in the mortgage. In making such division and payment the county treasurer shall send therewith a statement giving the description of the property described in the mortgage and the assessed value of the part thereof situate in each county. And for

the purpose aforesaid the county treasurer of any county may require the county treasurer of any other county to certify to him the assessed valuation of any tract of land in any such mortgage.

255. **PAID TO STATE TREASURER UNDER CERTAIN CONDITIONS** — When any real estate situate in this state and described in any such mortgage is not taxed by direct tax upon the assessed valuation thereof, then the tax herein provided shall be paid to the state treasurer and credited to the general revenue fund. The receipt thereof shall be endorsed upon the mortgage by the state treasurer and countersigned by the state auditor, who shall charge the treasurer therewith, and thereupon such mortgage shall be recorded or registered, as to such real estate in any office in this state, and thereupon such mortgage may be recorded or registered, but as to all real property described in any mortgage taxed upon an assessed valuation the registry tax shall be paid as provided in section 5 hereof.

256. **NOT RECORDED UNTIL TAX IS PAID** — No such mortgage, no papers relating to its foreclosure, nor any assignment or satisfaction thereof shall be recorded or registered after April 30, 1907, unless said tax shall have been paid; nor shall any such document, or any record thereof, be received in evidence in any court, or have any validity as notice or otherwise.

257. **MORTGAGES — PROVISION** — All mortgages of real estate recorded or registered prior to April 30th, 1907, shall be taxable as provided by law under the provisions of law relating thereto prior to the enactment hereof, provided, that the holder of any such mortgage may pay to the treasurer of the proper county, or the state treasurer, or both, the tax herein prescribed upon the amount of the debt secured by such mortgage at the time of such payment, as stated by the affidavit of the owner of such mortgage, to be filed with the county treasurer, and have the treasurer's receipt countersigned by the auditor endorsed thereon. The register of deeds or secretary of state, as the case may be, on presentation of such receipt, shall note on the margin of the mortgage record the date and amount of such payment. Thereafter such mortgage debt shall not be otherwise taxable.

258. **TAX — HOW DISTRIBUTED** — All taxes paid to the county treasurers under the provisions of this act shall be apportioned and distributed in the same manner as real estate taxes paid upon the real estate described in the mortgage.

259. **MORTGAGE DEFINED** — The words “real property,” “real estate” and “land,” as used in this act, in addition to the definitions thereof contained in the Revised Laws, 1905, shall include all property a conveyance whereof may be recorded or registered by a register of deeds under existing laws; and the words “mortgage,” as so used, shall mean any instrument creating or evidencing a lien of any kind on such property, given or taken as security for a debt, notwithstanding such debt may also be secured in part by a lien upon personalty. An executory contract for the sale of land, under which the vendee is entitled to or does take possession thereof, shall be deemed, for the purposes of this act, a mortgage of said land for the unpaid balance of the purchase price. No instrument relating to real estate shall be valid as security for any debt, unless the fact that it is so intended and the amount of such debt are expressed therein. But a mortgage given to correct a misdescription of the mortgaged property, or to include additional security for the same indebtedness, shall not be subject to the tax imposed by this act; nor shall a mortgage securing the same and other indebtedness, additional to that upon which such tax has been paid, be taxable hereunder, except for such added sum.

THE BUSINESS TAX OF ONTARIO, CANADA

[Copied from a pamphlet entitled *The Assessment Act*, published in 1909, pp. 8-11.]

10. — (1) Irrespective of any assessment of land under this Act, every person occupying or using land in the municipality for the purpose of any business mentioned or described in this section shall be assessed for a sum to be called “Business Assessment” to be computed by reference to the assessed value of the land so occupied or used by him, as follows:—

(a) Every person carrying on the business of a distiller for a sum equal to 150 per cent. of the said assessed value.

(b) Every person carrying on the business of a brewer for a sum equal to 75 per cent. of the said assessed value of the land occupied or used by him for such business exclusive of any portion of such land occupied and used by him as a malting house and for

a sum equal to 60 per cent. of the assessed value as to such last mentioned portion.

(c) Every person carrying on the business of a wholesale merchant, of an insurance company, a loan company or a trust company, as defined by this Act, or of an express company carrying on business on or in connection with a railway or steamboats or sailing or other vessels where such land is occupied or used mainly for the purpose of its business, or of a land company, or of a bank or a banker, or of any other financial business for a sum equal to 75 per cent. of the said assessed value.

(d) Every person carrying on the business of a manufacturer for a sum equal to 60 per cent. of the said assessed value; and a manufacturer shall not be liable to business assessment as a wholesale merchant by reason of his carrying on the business of selling by wholesale the goods of his own manufacture on such premises.

(e) Every person carrying on the business of what is known as a departmental store or of a retail merchant dealing in more than five branches of retail trade or business in the same premises or in separate departments of premises under one roof, or in connected premises, where the assessed value of the premises exceeds \$20,000, or of a coal or wood or lumber dealer, lithographer, printer or publisher, or of a club, in which meals or spirituous or fermented liquors are sold or furnished, or the business of selling, bartering or trafficking in fermented, spirituous or other liquors in any premises in respect of which a shop license has been granted, for a sum equal to 50 per cent. of the said assessed value; but in cities having over 100,000 population coal dealers shall be assessed for a sum equal to 30 per cent. of the said assessed value.

(f) Every person practising or carrying on business as a barrister, solicitor, notary public, conveyancer, physician, surgeon, oculist, aurist, medical electrician, dentist, veterinarian, civil or mining or consulting or mechanical or electrical engineer, surveyor or architect and, subject to subsection 5 of this section, every person carrying on a financial or commercial business or any other business as agent only, for a sum equal to 50 per cent. of the said assessed value. Provided that where a person belonging to any class mentioned in this clause occupies or uses land partly for the purposes of his business and partly as a residence 50 per cent. of

the assessed value of the land occupied or used by him shall for the purpose of the business assessment be taken as and construed to be the full assessed value of the land so occupied or used.

(g) Every person carrying on the business of a retail merchant in cities having a population of over 50,000 for a sum equal to 25 per cent. of the said assessed value; in other cities and towns having a population of 10,000 or over for a sum equal to 30 per cent. of the said assessed value; and in all other municipalities for a sum equal to 35 per cent. of the said assessed value.

(h) Every person carrying on the business of a photographer, or of a theatre, concert hall, or skating rink, or other place of amusement, or of a boarding stable, or a livery, or the letting of vehicles or other property for hire, or of a restaurant, eating house, or other house of public entertainment, or a hotel in respect of which a tavern license has been granted, or any business not before in this section or in clause (i) specially mentioned, for a sum equal to 25 per cent. of the said assessed value.

(i) Every person carrying on the business of a telegraph or telephone company, or of an electric railway, tramway or street railway, or of the transmission of oil or water, or of steam, heat, gas, or electricity for the purposes of light, heat or power, for a sum equal to 25 per cent of the assessed value of the land (not being a highway, road, street, lane, or public place or water or private right of way), occupied or used by such person, exclusive of the value of any machinery, plant or appliances erected or placed upon, in, over, under or affixed to such land.

(2) No person shall be assessed in respect of the same premises under more than one of the clauses of subsection 1, and where any person carries on more than one of the kinds of business mentioned in that subsection on the same premises, he shall be assessed by reference to the assessed value of the whole of the premises under that one of the said clauses in which is included the kind of business which is the chief or preponderating business of those so carried on by him in or upon such premises.

(3) Where the amount of the assessment of any person assessable under this section would under the foregoing provisions be less than \$250, he shall be assessed for the sum of \$100.

(4) Where any person mentioned in subsection 1 occupies or

uses land partly for the purpose of a residence, he shall be assessed in respect of the part occupied for the purpose of his business only; but this provision shall not apply to persons assessed under clause (f) of subsection 1.

(5) A financial or commercial business, in subsection 1 mentioned, shall not include a business carried on by operating vessel property of the following description, namely, steamboats, sailing or other vessels, tow barges or tugs; nor the business of a steam railway.

(6) No person occupying or using land as a farm, market-garden or nursery shall be liable to business assessment in respect of such land.

(7) Except as provided in clause (c) of subsection 1 of section 11 of this Act every person liable to assessment in respect of a business under subsection 1 shall not be subject to assessment in respect of income derived from such business, nor shall any person be subject to assessment in respect of dividends derived by him from shares in the stock of a corporation carrying on a mercantile or manufacturing business and which corporation is subject to assessment under subsection 1; nor shall the premiums or assessments of an insurance company be assessable by any municipality; nor shall any subordinate lodge of any registered Friendly Society or any officer thereof in respect of any business of such subordinate lodge be liable to any business assessment.

(8) Every person assessed for business assessment shall be liable for the payment of the tax thereon and the same shall not constitute a charge upon the land occupied or used.

PERSONAL PROPERTY TAX OF PENNSYLVANIA

[Copied from *Laws and Decisions Regarding Taxation in Pennsylvania*, 1904, pp. 143-150.]

ACT OF JUNE 1, 1889

SECTION 2. That the board of revision of taxes in cities co-extensive with counties, shall furnish the assessors of said city annually, and the commissioners of the other counties shall annually furnish the assessors of the several townships, boroughs and

cities of the respective counties with blanks in the form prepared and supplied by the Auditor General, and it shall be the duty of each of said assessors to furnish a copy of the same to every taxable person, co-partnership, unincorporated association, joint-stock association and company, limited partnership and corporation in his respective ward, district, borough or township, or to any officer, agent or employee found at the place of business of any such limited partnership or corporation in his ward, district, borough or township, upon which blank each taxable person, co-partnership, unincorporated association, company, limited partnership, joint-stock association and corporation, shall respectively make return annually of the aggregate amount of all the different classes of personal property made taxable by the first section of this act, held, owned or possessed by said person, co-partnership, unincorporated association, company, limited partnership, joint-stock association or corporation, either in his, her or its own right, or as trustee, agent, attorney-in-fact or in any other capacity, for the use, benefit or advantage of any other person, persons, co-partnerships, unincorporated association, company, limited partnership, joint-stock association or corporation; which return shall be made and sworn or affirmed to by such taxable person, and in the case of co-partnerships, unincorporated associations, and joint-stock associations and companies by some member thereof, and in the case of limited partnerships and corporations by the president, chairman or treasurer thereof: Provided, That any corporation, joint-stock association or limited partnership doing business in more than one county shall be liable to make such return only in the county in which its principal office within this Commonwealth is situated: Provided, That the taxable person, co-partnership, unincorporated association, joint-stock association, limited partnership, corporation or other person making the return aforesaid, shall not include in said return the obligations of public or private corporations, the tax upon which is required by law to be collected from the holder of such obligations and paid into the State Treasury by the corporation, it being the true intent and meaning of this act that the provisions of the law in force at the time of the passage of this act relating to the collection of the tax upon such obligations shall remain unaffected by the present act.

SECTION 3. The affidavit required to be made by the last preceding section shall be made before the proper assessor or other person authorized to administer oaths, and shall set forth that the return is full, true and correct to the best of his or her knowledge and belief; and any person or officer who shall wilfully and corruptly make a false and fraudulent return as aforesaid shall be guilty of wilful and corrupt perjury, and upon his or her conviction thereof shall be sentenced to pay a fine not exceeding five hundred dollars, and undergo an imprisonment by separate and solitary confinement at labor not exceeding seven years, and thereupon be forever disqualified from being a witness in any matter or controversy.

SECTION 4. That the several assessors are hereby authorized to administer the oath or affirmation to any person or officer making the return prescribed by the preceding sections, for the taking of which oath or affirmation no charge shall be made by the assessor; any assessor who shall accept such return from any person or officer required to make the same without requiring the oath or affirmation of such person or officer as herein provided, or who shall make any charge for administering such oath or affirmation, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be sentenced to a fine not exceeding five hundred dollars.

SECTION 5. That upon the refusal or failure of any taxable person, co-partnership, unincorporated association, limited partnership, joint-stock association or corporation, to make a return properly verified by oath or affirmation, as required by this act, within ten days after being notified so to do, it shall be the duty of the assessor to make a return for such taxable person, co-partnership, unincorporated association, joint-stock association, limited partnership or corporation from the best information he can obtain; he shall examine the records and lists of judgments and mortgages, returned by the prothonotary and the recorder of deeds and mortgages, under the seventh and eighth sections of this act, in the commissioners' office or office of the board of revision of taxes or remaining in their respective offices, and assess such defaulting person, co-partnership, unincorporated association, joint-stock association, limited partnership or corporation with the amounts of all such liens with interest thereon, and add thereto the amount

of all taxable property obtained from all other sources of information; which return the proper county commissioners or board of revision shall have power and it shall be their duty to revise and correct according to the best information they can command from the records in their office or other sources, and it shall be their duty to send for a person, persons and papers, and to administer an oath or affirmation to him or them in such form as shall be prescribed and supplied by the Auditor General, to which revised and corrected estimated return the proper county commissioners or board of revision of taxes shall add fifty per centum, and the aggregate amount so obtained shall be the basis for taxation: Provided, That if such taxable person or co-partnership, or unincorporated association or company, limited partnership, joint-stock association or corporation, on or before the day fixed for appeals from assessments, shall present reasons supported by oath or affirmation, satisfactory to the proper county commissioners or board of revision, excusing a failure to make a return such as should be made to the assessors, and shall then make such return, the proper county commissioners or board of revision may substitute such return for that returned by the assessor and corrected as aforesaid, to have like effect as if no failure to return had occurred.

SECTION 6. That if any assessor and any taxable person or members of any co-partnership, unincorporated association or company, officer or stockholder or member of any limited partnership, joint-stock association or corporation, shall agree or enter into any arrangement or understanding that upon the failure of such taxable person, co-partnership, unincorporated association, company, limited partnership, joint-stock association or corporation, to make the return required by the third section of this act to be made, such assessor shall return a less amount of property made taxable by the first section of this act than should have been returned by such taxable person, co-partnership, unincorporated association, company, limited partnership, joint-stock association or corporation, the persons entering into such agreement, arrangement or understanding, shall be guilty of conspiracy, and upon conviction thereof shall be sentenced to pay a fine not exceeding one thousand dollars, and undergo an imprisonment either at labor by separate or solitary confinement or to simple imprisonment, not exceeding three years, at the discretion of the court.

SECTION 7. That from and after the passage of this act, it shall be the duty of the recorder of deeds, mortgages and other instruments of writing, in each and every county and city co-extensive with a county in this Commonwealth, to keep a daily record, separate and apart from all other records, of every mortgage or article of agreement given to secure the payment of money entered in his office for recording, which said record shall set forth the following information, to-wit: The date of the mortgage or agreement, the names of the parties thereto, the just sum of money secured, the precise residence of the mortgagee or person to whom interest is payable whenever such residence can be ascertained, a brief description of the real estate upon which such mortgage is secured, and the date or several dates when the said sum or portion of the said sum shall become due and payable, and a like daily record of every assignment of a mortgage or an article of agreement given to secure the payment of money, and also in the number of mortgages and agreements, together with the amount of same, and the names of the parties thereto, which shall have been that day satisfied of record; and it shall be the further duty of the recorder, on the first Monday of each month, to file the aforesaid daily record in the commissioners' office or with the board of revision of taxes of the proper county or city, and one certificate appended thereto shall be all that shall be required.

SECTION 8. That it shall be the duty of the prothonotary or clerk of the court of common pleas in each and every county or city co-extensive with a county in this Commonwealth, forthwith upon the passage of this act, to keep a daily record, separate and apart from all other records, of every single bill, bond, judgment or other instrument securing a debt, entered of record in his office, which daily record shall set forth the following information, to-wit: The date of the instrument, the names of the plaintiff and defendant, together with the precise residence of the plaintiff or person to whose use such bill, bond, judgment or other obligation to pay money is marked, whenever such residence can be ascertained, the just sum secured, and the date or several dates when the said sum or portion of the same shall become due and payable, with the further information whether any of said bonds or judgments are accompanied with mortgages, and also the number of every single

bill, bond, judgment or other instrument securing a debt, together with the amount of same and the names of the plaintiff and defendant thereto, which shall have been that day satisfied; and it shall be the further duty of prothonotary or clerk of the court of common pleas to file the aforesaid daily record of bills and so forth in the commissioners' office or with the board of revision of taxes of the proper county or city, on the first Monday of each month, and one certificate appended thereto shall be all that shall be required.

SECTION 9. That it shall be the further duty of the county commissioners or board of revision of taxes, upon obtaining record of the existence within any county or city co-extensive with a county of said mortgages and other obligations, that shall be owned by a person, co-partnership, association, limited partnership, joint-stock association or corporation, resident or doing business within this Commonwealth, and not a resident of said county, or in the case of a corporation, limited partnership or company not having its principal office within said county, to transmit a certified statement of said record to the county commissioners or board of revision of taxes of the proper city or county wherein said person is domiciled or wherein said co-partnership, association, limited partnership, joint-stock association or corporation does business or maintains its principal office, and also to further transmit to said commissioners or board of revision of taxes a certified statement, whenever it shall appear from the record that said mortgages and other obligations are satisfied, which upon its receipt shall be filed of record by the county commissioners or board of revision of taxes.

SECTION 10. That it shall be the further duty of the county commissioners or the board of revision of taxes of the proper city or county, upon the receipt of the daily records from the offices of the recorder or prothonotary or clerk, to file the same in their office, and on or before the time of making the annual or triennial assessment in any year, to prepare from the said records a statement or statements, showing as far as practicable the number and amount of said mortgages and all other obligations and names of the parties thereto, in each township or ward in the county, which said statement shall be delivered to the assessor or assessors of each township or ward respectively before said officers shall enter upon the discharge of their proper duties.

SECTION 11. That it shall be the duty of the assessor or assessors, in making up their valuations of money at interest in their respective districts, to compare the return made by each person, co-partnership, association, limited partnership, joint-stock association or corporation with the statement furnished them by the county commissioners or board of revision of taxes, and if the amount of said mortgages or other obligations as contained in said statement shall exceed the amount set forth in the return of any person, co-partnership, association, limited partnership, joint-stock association or corporation, to note the fact and make return of the same to the commissioners or board of revision of taxes of the proper city or county.

SECTION 12. That it shall be the further duty of the county commissioners or board of revision of taxes, upon the returns made to them by the assessors of the several townships, wards and boroughs, in all cases where it shall appear on proving the record, that any person, co-partnership, association, limited partnership, joint-stock association or corporation, has returned a less amount of money at interest than appears from the records in possession of the commissioners or board of revision of taxes, thereupon to raise the valuation of the property of said person, co-partnership, association or limited partnership, joint-stock association or corporation to the amount set forth in said records, and forthwith to notify the persons, co-partnerships, associations, limited partnerships, joint-stock associations or corporations interested of the said increase of valuation, and that the same is subject to be appealed from at the same time and the same manner as the original assessment.

SECTION 13. That any wilful failure on the part of the county commissioners, board of revision of taxes, ward, borough and township assessors, recorders of deeds, prothonotaries and clerks of courts, to carry out the duties imposed upon them by the several sections of this act, shall be deemed a misdemeanor, and upon conviction thereof the person or persons so failing to comply shall be sentenced to a fine not exceeding five hundred dollars and imprisonment not exceeding one year.

SECTION 15. That the Auditor General shall furnish to the county commissioners or boards of revision in counties or cities co-

extensive with counties, all necessary books, blanks, notices and papers to carry this act into effect.

SECTION 17. That the taxes imposed upon personal property by the first section of this act, shall be collected by the several counties and cities, and on the first Monday of September shall pay unto the State Treasurer all such sum or sums of money as may then have been collected, and shall on the second Monday of November immediately following in each year complete and pay unto the said State Treasurer the whole amount remaining unpaid; and in default thereof, it shall be the duty of the Auditor General to add ten per centum penalty to each county or city on all taxes remaining unpaid on the second Monday of November of each year, which shall be charged in the duplicate against each delinquent taxpayer in arrears on and after said day: Provided, That city or county treasurers shall be permitted to retain for their own use from the gross sum of money paid by them into the State treasury the commissions named and prescribed by existing laws.

SECTION 18. That from and after the passage of this act, it shall be unlawful for any person or persons, co-partnership, unincorporated association, limited partnership, joint-stock association or corporation whatsoever, in loaning money at interest to any person or persons, whether such loans be secured by bond and mortgage, or otherwise, to require the person or persons borrowing the same to pay the tax imposed thereon by the first section of this act; and in all cases where such tax shall have been paid by the borrower or borrowers, the same shall be deemed and considered usury, and be subject to the laws governing the same.

SECTION 33. That nothing in this act contained shall be taken or construed to alter or repeal existing laws imposing taxes upon collateral inheritances, or imposing any bonus or tax, nor with the license or tax or net earnings to be paid by bankers, brokers, private banks, unincorporated banks and savings institutions.

ACT OF JUNE 8, 1891.

Whereas, There is a wide-spread demand for the enactment of such measures as will bring about the equalization of taxation and the relief of local taxation upon real estate:

And, whereas, Moneyed capital, taxable under the first section

of the act, entitled "A further supplement to an act, entitled 'An act to provide revenue by taxation,' approved the seventh day of June, Anno Domini one thousand eight hundred and seventy-nine," approved the first day of June, Anno Domini one thousand eight hundred and eighty-nine, does not bear its just proportion of the burdens of local taxation:

And whereas, It is desirable to largely increase the State appropriation for the support of the public schools, out of an increased taxation upon the capital stock of certain corporations imposed by the twentieth and twenty-first sections of said act; And whereas, Experience has shown that the said twentieth and twenty-first sections result, in many cases, in requiring corporations which pay dividends less than six per centum to pay a larger amount of tax than corporations paying dividends of six per centum are required to pay;

And whereas also, It has shown that the mode prescribed in the twenty-first section of said act for taxing corporations paying dividends of six per centum and upwards at a rate of tax to be measured by the dividends results, in many cases, in corporations with large investments in bonds, mortgages and moneys at interest, paying a less rate of tax than other corporations without capital stock and individual citizens are required to pay, under the first section of said act, upon the same kind of property;

And whereas also, It appears that the taxes imposed upon corporations and individual citizens by the first and twenty-first sections of said act can be made much more nearly uniform by taxing all corporations, limited partnerships and joint-stock associations having capital stock, at a fixed rate of four mills upon each dollar of the actual value of their whole capital stock, including as well their bonds, mortgages and moneys at interest, as their franchises and property of other kinds; therefore,

SECTION 1. Be it enacted, &c., That from and after the passage of this act, all personal property of the classes hereinafter enumerated, owned, held or possessed by any person, persons, co-partnership or unincorporated association or company, resident, located or liable to taxation within this Commonwealth, or by any joint-stock company or association, limited partnership, bank or corporation whatsoever, formed, erected or incorporated by, under

or in pursuance of, any laws of this Commonwealth or of the United States, or of any other state or government, and liable to taxation within this Commonwealth, whether such personal property be owned, held or possessed by such person or persons, co-partnership, unincorporated association, company, joint-stock company or association, limited partnership, bank or corporation, in his, her, their or its own right, or as active trustee, agent, attorney-in-fact or in any other capacity for the use, benefit or advantage of any other person, persons, co-partnership, unincorporated association, company, joint-stock company, or association, limited partnership, bank or corporation, is hereby made taxable annually for State purposes at the rate of four mills on each dollar of the value thereof, and no failure to assess or return the same shall discharge such owner or holder thereof from liability therefor to the Commonwealth, that is to say:

All mortgages, all moneys owing by solvent debtors, whether by promisory note or penal or single bill, bond or judgment, all articles of agreement and accounts bearing interest; all public loans whatsoever, except those issued by this Commonwealth or the United States, all loans issued by or shares of stock in any bank, corporation, association, company or limited partnership, created or formed under the laws of this Commonwealth or of the United States or of any other state or government, including car trust securities and loans secured by bonds or any other form of certificate or evidence of indebtedness, whether the interest be included in the principal of the obligation or payable by the terms thereof, except shares of stock in any corporation or limited partnership liable to the capital stock tax imposed by the twenty-first section of this act, or relieved from the payment of tax on capital stock by said section; all moneys loaned or invested in other states, territories, the District of Columbia or foreign countries; all other moneyed capital in the hands of individual citizens of the State: Provided, That this section shall not apply to bank notes, or notes, discounted or negotiated by any bank or banking institution, savings institution or trust company: And provided, That the provisions of this act shall not apply to building and loan associations: Provided also, That this section shall take effect on the first day of January, Anno Domini one thousand eight hundred and ninety-two.

SECTION 2. That the county commissioners or board of revision of taxes of each and every county in this Commonwealth are hereby authorized and required, annually, hereafter, at the usual period of making county rates and levies, to assess or cause to be assessed, for the use of the Commonwealth, upon all stages, omnibuses, hacks, cabs and other vehicles used for transporting passengers for hire, except steam and street passenger railway cars owned, used or possessed within this Commonwealth by any person or persons or by any corporate body or bodies, and upon all annuities yielding annually over two hundred dollars, a tax of four mills, upon each and every dollar of the value thereof: Provided also, That this section shall take effect on the first day of January, Anno Domini one thousand eight hundred and ninety-two.

SECTION 3. That for the year one thousand eight hundred and ninety-two, and annually thereafter, three-fourths of the net amount of tax based on the return of property subject to the taxation for State purposes required to be made to and accepted by the State board of revenue commissioners, annually, by county commissioners and the board of revision of taxes in cities co-extensive with counties, that is collected and paid into the State Treasury by a county, or city co-extensive with a county, shall be returned by the State Treasurer to such county or city co-extensive with a county for its own use in payment of the expenses incurred by it in the assessment and collection of said tax: Provided, That in consideration of the return to counties, and cities co-extensive with counties, of the tax as aforesaid, no claim shall be made upon or allowed by the Commonwealth for abatements, tax collectors' commissions, extraordinary expenses, uncollectible taxes or for keeping a record of judgments and mortgages.

NOTES AND REFERENCES

NOTES AND REFERENCES

CHAPTER XVI

¹ Garver's *History of the Establishment of Counties in Iowa*, Maps II and III, in *The Iowa Journal of History and Politics*, Vol. VI, pp. 442, 443.

² Marquette and Joliet landed on Iowa soil near the mouth of the Iowa River on June 25, 1673. — Weld's *Joliet and Marquette in Iowa*, in *The Iowa Journal of History and Politics*, Vol. I p. 6.

³ *Territorial Laws of Michigan*, Vol. III, p. 1326. This act was approved September 6, 1834. See Map I, in *The Iowa Journal of History and Politics*, Vol. VI, p. 441.

⁴ An Act to divide the Territory of Wisconsin and to establish the Territorial Government of Iowa. — Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 102.

⁵ *The Iowa Journal of History and Politics*, Vol. III, p. 201. This article by Mr. Van der Zee contains excellent maps showing the different routes to Iowa, also showing Iowa roads as developed during the Territorial period. Settlers coming by way of the Great Lakes might reach Iowa in various ways. They might pass up the Fox and down the Wisconsin rivers; they might cross the country from Milwaukee to Dubuque; or they might go to Chicago and thence by the way of Illinois River and across the country to Fort Madison. Settlers from Pittsburg, Philadelphia, and Baltimore might travel by way of the Cumberland Road to St. Louis, or they might pass down the Ohio and thence up the Mississippi. While routes across the country might be used for purposes of immigration they were not so practicable for the marketing of produce. The greatest thoroughfare leading to the Iowa country in the era before railroads was the Ohio River.

⁶ *The Iowa Standard*, Vol. I, No. 15, January 29, 1841. These high transportation rates were in the nature of an excessive tax on all produce sold by the farmer and all goods purchased by him.

⁷ Work on the Baltimore and Ohio Railroad was commenced in 1828.

⁸ When Iowa was first opened for settlement after the cession of the Black Hawk Purchase there were no roads in the modern sense. Indian trails constituted about the only roads of the early pioneers. Little was done to improve this condition while the Territory remained a part of Michigan.

In 1836, however, the Assembly of the Territory of Wisconsin provided for the appointment of six commissioners to lay out a road west of the Mississippi. — *Laws of Michigan and Wisconsin, 1834-1836*, p. 57.

But not until the final organization of the Territory of Iowa did the road question receive serious attention. Nearly two hundred acts were passed during the Territorial period, and the settled portion of the State was soon covered with a network of roads connecting the principal towns and cities. — *The Iowa Journal of History and Politics*, Vol. III, pp. 210, 211.

⁹ *Laws of Iowa, 1848 (Extra Session)*, p. 89.

¹⁰ *Laws of Iowa, 1848 (Extra Session)*, p. 100.

¹¹ *Laws of Iowa, 1850-1851*, pp. 22, 70, 127, 129, 202.

¹² *Laws of Iowa, 1852-1853*, pp. 199, 201, 214, 218.

¹³ *Laws of Iowa, 1852-1853*, pp. 199-201.

¹⁴ *Congressional Globe*, Appendix, 2nd Session, Thirty-second Congress, p. 235.

¹⁵ On this date the Congressional act incorporating the Union Pacific Railroad Company and providing for the central route was approved. — *United States Statutes at Large*, Vol. XII, pp. 489-498.

¹⁶ This subject has been well discussed by Mr. Louis Pelzer in his biography of *Augustus Caesar Dodge*, published by The State Historical Society of Iowa in the *Iowa Biographical Series*. — See Chapter XIII on *The Iowa Land Bill*.

The Iowa Land Bill as finally passed on May 15, 1856, was the result of several years of agitation. For a copy of the bill see *United States Statutes at Large*, Vol. XI, p. 9.

¹⁷ *Disposition of Iowa Land for Public Purposes*, in the *Census of Iowa*, 1905, p. x. The table of land concessions made by Congress for railroad purposes appears in the *Report of the Land Department*, 1899-1901, p. 55.

¹⁸ Larrabee's *The Railroad Question*, pp. 319-348.

¹⁹ *Report of Treasurer of State*, 1859, p. 11.

²⁰ *Code of Iowa*, 1851, p. 78.

²¹ *Laws of Iowa*, 1856, pp. 279, 280.

²² *Laws of Iowa*, 1858, p. 309.

²³ In order to ascertain the amount of railroad taxes paid from 1855 to 1862, one would be obliged to consult the county records in all the counties through which roads passed. This would be an almost endless task; and besides, such county records are by no means accurate or complete.

CHAPTER XVII

²⁴ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 264.

²⁵ *The Dubuque Herald*, Vol. XII, No. 19, January 23, 1862. This issue, in an editorial entitled *Suggestions to the General Assembly*, makes a strong plea on the general subject of railway taxation. It reads in part as follows:

"There are lands exempt from taxation by Congress, such as railroad grants, which should be assessed, and Congress should be petitioned by the General Assembly to repeal so much of any Acts as exempt from taxation grants of land made by Congress for the benefit of railroad corporations. Surely it is enough to give away millions of dollars' worth of lands to these companies without exempting such lands from taxation till they go into other hands. It is all wrong, unjust to the people at large, and in the present condition of the country, intolerable. We therefore suggest that railroad lands be made subject to taxation.

"Under existing laws, notwithstanding the Constitution of the State to the contrary which requires corporation property to be taxed with the property of natural persons, as we have already

shown the property of railroads and of most other corporations escape taxation altogether. Some members of the General Assembly will scarcely believe this, but it is nevertheless a fact, and we are rather surprised and disappointed that the Governor did not call attention to it in his Message. Of all the railroad property in this State, amounting in value to not less than thirty millions of dollars, not a cent of tax has it paid for any purpose during the last two years, if we be not much mistaken. This result was effected cunningly by drafting the present Revenue Law in such a manner as to tax the *stock* of corporations instead of the property direct. In this way these companies manage to escape taxation under the plea that their stock is valueless. By the same means a number of persons owning large tracts of unproductive lands might band themselves together and form a corporation, and issue stock to represent their lands, and under the plea that the stock is not profitable, ask and obtain exemption from taxation on their wild lands.

“But the railroad companies cannot in truth say that their stock is not valuable, for every railroad company in the State is increasing in wealth by the extension of their roads, by the increase of their rolling stock and by additions to their depot grounds, buildings, &c. This, the people of the State should be glad to see, as it is an evidence of prosperity, but it should not be a prosperity acquired at the expense and sacrifice of all the rest of the State. We suggest therefore that railroad property be taxed like other property, at its actual value, as nearly as it can be ascertained, and let the Revenue Law be so amended in this respect that there may not be left a hole, nook or cranny to creep out of. We notice already that the railroad interests are represented at the Capital, and these companies will doubtless make a combined effort to maintain their present position and advantages. Let the people of the State look to it that their members of the General Assembly do their duty unawed, uninfluenced and unswerved by these corporations.”

²⁶ *Laws of Iowa*, 1862, p. 227.

²⁷ See above pp. 115-140.

²⁸ On the one hand the cities complained bitterly because under

the method of distribution provided by law they received only a small part of what they would receive under a general property tax. On the other hand some rural counties, having no roads, were inclined to feel that populous centers were receiving more than their just share. The law was not wholly satisfactory to any section.

²⁹ *Laws of Iowa*, 1862, p. 227.

³⁰ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, p. 39.

³¹ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, p. 56.

Governor Stone was greatly impressed with the necessity of securing more railroads, and was more than willing to take any legitimate step toward that end. He had little sympathy for the agitation then beginning against railroads, and in his message of 1866 recommended sending a memorial to Congress asking for aid that the Union Pacific Road might be extended from the Missouri to some point on the Des Moines.

³² See above p. 35.

³³ *Laws of Iowa*, 1856, Extra Session, p. 5.

This law was entitled "An Act to accept of the grant and carry into execution the trust conferred upon the State of Iowa, by an act of Congress entitled an act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of Rail Roads in said State, approved May 15th, 1856."

³⁴ All letters quoted in this monograph are on file in the library of The State Historical Society of Iowa, at Iowa City.

³⁵ The letter of Senator McNutt is in part as follows:

"When the General Assembly met again in 1866 the matter of railroad discriminations against our people assumed a still more momentous shape. The most of our time that session was occupied with that question. Weeks after weeks were spent discussing whether or not the state had a right to prevent unjust discriminations, or in any way control railroad charges. The then Attorney General (Hon. F. E. Bissell) gave it as his official opinion that the state possessed no such right, but that in the matter of tariff charges

those corporations were above and beyond all control by the legislature. We had able lawyers of the opposite opinion. But Bissell's opinion, (who was himself a railroad attorney) gave great encouragement to the railroad party, and it openly declared that in the original 'charter' the State either failed or neglected to reserve the right to regulate or limit railroad rates '*in express terms*' and therefore could not assume it now.

"Listening to these astounding claims put forth by the attorneys for the corporations, some of us said that if God and the good people of Iowa ever gave us a chance to reserve in a railroad 'charter' the right of control we would do it in such '*express terms*' as even a railroad attorney could neither mystify nor explain away; and the opportunity to do this very thing occurred in 1868. A certain state of facts existed regarding the management of the Chicago, Rock Island & Pacific railroad company, which rendered new legislation necessary. The executive committee headed by John F. Tracy had issued and put upon the New York market nearly *four million dollars* worth of watered stock and realized the cash for it before certain other parties were aware of what had been done. With this money the Tracy party claimed that they intended to build the road from Des Moines to Council Bluffs. (The road at this time being completed only to Des Moines). The immediate result of this stock operation was a bitter quarrel between the Tracy and the anti-Tracy parties of the stockholders. The Tracy party were said to be in the minority but they had the money and the executive committee. Suits were commenced against them in the New York courts to forbid their construction of the road beyond Des Moines and to compel them to disgorge the four million of dollars among the stockholders. In the meantime the company had forfeited the land grant for the nonconstruction of the road beyond Des Moines, according to the terms of the original act. The consolidation of the Chicago, Rock Island & Pacific railroad company's stock, (a company organized under the laws of Illinois) with that of the Mississippi & Missouri railroad company (organized under the laws of Iowa) needed legislative sanction under the General Assembly of Iowa: and further, the directors of the consolidated company wanted not only a legalizing act covering the above points, but also an extension of their term of office

for one year beyond the time for which they had been elected by the stockholders.

"Under this state of things the Tracy party, legally representing the consolidated company, applied to our legislature for relief and protection: accordingly a bill was introduced covering the desired points, and regranting the lands to the company under certain conditions and restrictions which, when agreed to by the company, should remain forever a *contract* between the state and the company.

"At this juncture one of the judges of the Supreme Court of New York issued a solemn injunction upon the General Assembly of Iowa forbidding that body to legislate in any way upon the matters above recited. Some of us not having before our eyes the fear of New York courts, nor the majesty of Judge Cardozo, laughed at that judicial functionary's lordly impudence. We saw that the grand opportunity had now arrived when the State could justly step in and pass an act compelling the company to construct the road for the sake of the extraordinary relief sought, and in that act *reserve* in '*express terms*', as a matter of *contract* the right to control the tariff rates of at least one powerful corporation connecting with the Pacific railroad at Council Bluffs, and thereby control the rates of other lines crossing the state with similar connections. This express reservation of right, in the form of what was known as the 'Doud Amendment' was inserted in the act in relation to the Chicago, Rock Island & Pacific Railroad Company, and will be found as the first proviso in the second section of that act, Chapter 13 on page 14, *Acts of the Twelfth General Assembly*, and is in the following words:

'Provided said railroad company accepting the provisions of this act, shall at all times be subject to such rules and regulations and rates for the transportation of freight and passengers, as may from time to time be enacted by the General Assembly of Iowa.'

"The same proviso was afterwards inserted in the act in relation to the Des Moines Valley railroad, also in the act in relation to the McGregor Western Railroad Company, also the Dubuque & Sioux City Railroad Company. All acts of the Twelfth General Assembly, thus making an '*express contract*' between the state and the companies, setting at rest forever the question of control for rates of tariff, for freight, and passengers.

"The passage of the last named act aroused much excitement along the proposed railroad line from Cedar Falls via Fort Dodge to Sioux City, in consequence of the railroad managers declaring that not another mile of road would ever be built until the proviso known as the 'Doud Amendment' should be repealed. Work ceased along the line: the laborers were discharged, the people who expected railroads through their country became alarmed. Meetings were held at Fort Dodge, Sioux City and other places, and extraordinary efforts were made to induce Governor Stone to call an extra session of the Legislature to repeal the so called 'Doud Amendment.' A committee was appointed to visit in person the members of the Legislature to get them to sign a petition to the Governor to call an extra session. As I was one of the original prompters and friends of the 'Doud Amendment' they did not visit me, but they sent me a circular letter to which I replied in a public letter, telling them to let that amendment alone; and Governor Stone refused to call an extra session."

³⁶ *Report of Treasurer of State, 1867, p. 8.*

³⁷ *Laws of Iowa, 1868, p. 281.*

Special attention should be called to *Senate File, No. 159*, introduced by the Ways and Means Committee in 1868. The bill which provides for a progressive tax on gross receipts is in part as follows:

"Sec. 1. *Be it enacted by the General Assembly of the State of Iowa, That each railroad company operating any railroad in this State shall annually, on or before the 15th day of February, furnish to the State Treasurer a statement of the gross receipts of its railroad so operated, without deducting expenses, for the year ending on the 31st day of December next preceding, together with the number of miles of main track of said railroad so operated in this State, which statement shall be sworn to by the President and Secretary and General Agent of the railroad, or the officers of such company performing the duties of those mentioned.*

"Sec. 2. The State Treasurer shall levy on said gross receipts a tax as follows: On the first one thousand dollars, or part thereof, per mile, one per centum; on the second one thousand dollars, or part thereof, per mile, two per centum; on the third thousand dollars, or part thereof, per mile, three per centum; on the fourth

thousand dollars, or part thereof, per mile, four per centum; and upon all receipts over four thousand dollars per mile the tax so levied shall be five per centum."

³⁸ *Laws of Iowa*, 1870, p. 109.

³⁹ *Report of Treasurer of State*, 1871, p. 12.

⁴⁰ *Report of Treasurer of State*, 1871, pp. 35-39.

⁴¹ As the opposition developed, it became all the more necessary for the companies to complete their respective roads in the time limits specified by law. A company asking for an extension of time was frequently obliged to submit to greater restrictions. The letter of Mr. McNutt makes this point clear.

⁴² See above pp. 36, 53.

⁴³ *Report of Treasurer of State*, 1871, pp. 12, 13.

CHAPTER XVII

⁴⁴ *Laws of Iowa*, 1878, p. 67.

⁴⁵ *Debates of the Constitutional Convention of 1857*, Vol. I, p. 104.

⁴⁶ *Debates of the Constitutional Convention of 1857*, Vol. I, p. 106.

⁴⁷ *Debates of the Constitutional Convention of 1857*, Vol. I, p. 108.

⁴⁸ *Debates of the Constitutional Convention of 1857*, Vol. I, p. 108.

⁴⁹ *Debates of the Constitutional Convention of 1857*, Vol. I, p. 115.

⁵⁰ *Debates of the Constitutional Convention of 1857*, Vol. I, p. 143.

⁵¹ *Debates of the Constitutional Convention of 1857*, Vol. I, pp. 149, 152, 157.

⁵² *Daily State Register*, February 18, 1864. In this issue a letter appears, dated at Washington City, February 5th, 1864, which shows the conservative attitude toward certain agitation in the State. The letter is in part as follows:

"I need not tell you how sensitive capital is, nor need I say that the railroad interest of Iowa is entirely dependent for its continuation upon Eastern capital, for to you these are evident facts; but, I may tell you, I know that any legislation by you this session

which looks, at the East, as being unfriendly to the railroad interests, will effectually and completely stop the negotiation of any Iowa Railroad securities, and, of course, bring to a sudden termination the further extension of railroads there. Take, for instance, the bill for the resumption by the State of the Land Grant. Now, while that would not affect directly the Mississippi & Missouri Railroad Company, as all our lands are certified, still we would find at once a hesitation and distrust of our securities. We would be told, 'we are afraid of your Legislature. They are unfriendly. True, they have not hit you this time, but they have struck other railroads. Next session they will be after you. They will increase taxation on you, or they will undertake to regulate your rates and fares, and with a penny-wise policy, fix them at ruinous figures. We are afraid of them. They are disposed to squeeze the last cent possible from your earnings, &c., &c., and we believe we had rather not invest there.' *It is utterly impossible to extend any railroads in Iowa without encouragement from the Legislature rather than embarrassment. Let the State in every possible way encourage the construction of roads until they are completed, and begin to earn something for their stock-holders, a thing which has not yet happened to any railroad company in Iowa, and then in due time let the State Treasury reap its reward, not by grinding the companies till there is nothing left, but in the vastly increased amount of property subject to taxation, and the people theirs in the greatly enhanced value of their property, and in the facilities afforded for a rapid locomotion to any part of the State.*"

⁵³ *Daily State Register*, March 6, 1864.

⁵⁴ *House Journal*, 1864, p. 293.

⁵⁵ *Daily State Register*, March, 8, 1864.

⁵⁶ *Daily State Register*, February 20, 1864.

⁵⁷ *Daily State Register*, March 9, 1864.

⁵⁸ *Daily State Register*, March 12, 1864.

⁵⁹ *Daily State Register*, March 27, 1864.

The bill to tax railroads being under consideration in the House

of Representatives, Hon. T. L. Buckham of Fremont County spoke substantially as follows:

"I believe it is right that Railroads should pay a tax as well as other corporations or persons. I believe that the abstract principles of justice dictate to me that those counties which have been so unmercifully swindled by the Railroads and whose people have been so heavily taxed for the purpose of securing Railroads should receive a tax from them for these immense frauds and heavy outlays. If you exempt any class of persons from taxation let it be those who bear the burdens of the country and first develop its resources. He who tills the soil is the one on whom rests the prosperity of your State, while railroads are but an incident thereto. If you exempt anyone I cannot see why all the reasons which have been adduced to exempt railroads do not apply with greater force to exempt those on whom not only railroads but the whole country depends. — Sir, I am in favor of taxing all at this time, for if [you] don't do it now, you can never do it, for Railroad influence and power are fast gaining ground, and will soon, if they do not already, claim the State. . . . I know my constituents want railroads and are willing to go to great lengths to secure their completion, but we cannot afford to be ruined for that purpose, and hence we must begin soon as possible to get the upper hand of them or they will throttle us."

⁶⁰ *Constitution of Iowa*, 1857, Article VIII, Section 2.

⁶¹ *Daily Iowa State Register*, Vol. V. No. 17, February 6, 1866.

⁶² *Daily Iowa State Register*, Vol. V, No. 52, March 18, 1866.

⁶³ *Laws of Iowa*, 1868, p. 281.

⁶⁴ *Daily Gate City* (Keokuk), Vol. XIV, No. 314, March 4, 1868.

At the Anti-Railroad Bond Meeting of Lee County, held in Franklin Center on February 29th, resolutions were adopted which indicate the feeling in the counties then weighed down by heavy railroad debts. The resolutions adopted were as follows:

"*Resolved* 1. That this meeting believes that said Bonds were wrongfully issued, and that the same are illegal, and their collection would be an infamous fraud upon the tax-payers of the county of Lee.

"2. That we will resist their payment in every honorable way possible, and we have that confidence in justice and right as to believe the Court will protect the people interested from the payment of this iniquitous and fraudulent obligation.

"3. That we are utterly opposed to any compromise or agreement of the county to pay any part of such pretended debt.

"4. That we most respectfully request the several members of this county to make no compromise with the bond-holders, nor in any manner compromise the interests of the county in regard to the same, and urge them to resign rather than be a party to such a compact.

"5. That we strongly urge that a vigorous defence be made in behalf of the tax-payers in all the courts in which said Railroad Bond cases have come up, or may be taken, and rely upon the justice of our opposition to the Bonds, and have confidence to believe we will ultimately succeed.

"6. That we shall oppose the Bonds, or any compromise thereof, until we are forced, by reason of adverse circumstances, to change our present views and policy.

"7. That we do not concur in the action of a certain meeting, lately held in Fort Madison, in reference to said Bonds, and positively dissent from the same, as the proceedings thereof have been reported to and understood by us; that said meeting did not reflect the sentiments of the great majority of the people; and so far as the Board of Supervisors have taken any official action at the request of said meeting, we earnestly appeal to said Board to rescind the same at their ensuing meeting in March.

"8. That we now in good faith and honor pledge ourselves to stand firmly and to the last by the Supervisors of the county, so long as they shall stand up and resist the payment of this wicked and unholy pretence of a claim."

⁶⁵ *Daily Gate City* (Keokuk), Vol. XVI, No. 278, February 18, 1870. In this instructive editorial, which was by no means hostile to the railroads, there appears the following interesting statement of the argument under consideration:

"Here is the Valley road, for instance, running two hundred miles and through a score of counties. Lee is the only county, we believe, that carries a debt to aid the construction of that road.

These other counties get the benefits of the roads as much as Lee; ay! more than Lee. For that road carries to those counties the men and capital that won't settle here because of our indebtedness. That road has added wealth, has given population and prosperity to each of those counties. Their farms have been doubled in price in clear profitable advance, while ours here in Lee carry off the mortgage of debt. We don't begrudge those counties their prosperity — we are glad of it. But we say to them while this road carries you[r] population and wealth away from us, as you will enjoy the benefits of the road whatever becomes of the tax the road pays, you having the road without cost to you, it is but just you should let that tax go to relieve us of the burden as much, even more than ourselves enjoy."

⁶⁶ Fairall's *Manual of Iowa Politics*, Vol. I, p. 83.

⁶⁷ Fairall's *Manual of Iowa Politics*, Vol. I, p. 84.

⁶⁸ Mr. Hull is now Chairman of the Committee on Military Affairs of the United States House of Representatives.

⁶⁹ Personal letter to the writer. Mr. McNutt concludes his letter by saying that the railway interests made good their threat in 1874 that he would never again become a member of the legislature.

⁷⁰ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, p. 314.

⁷¹ *Report of Treasurer of State*, 1869, pp. 13-15.

⁷² *Daily Iowa State Register*, Vol. IX, No. 49, February 27, 1870.

⁷³ *Des Moines Daily Bulletin*, No. 102, April 30, 1870.

⁷⁴ The Russell and Hopkirk bills, received from Governor Larabee, will be of special interest to the student of railway taxation in Iowa. The following sections are copied from said bills:

HOPKIRK BILL

"Section 1. *Be it Enacted, by the General Assembly of the State of Iowa*, That all the property, both real and personal, belonging to railroad corporations in this State, shall hereafter be taxed for all purposes the same as that of individuals with the exceptions and under the regulations hereinafter specified.

"Sec. 2. Every railroad corporation in this State shall make a list or schedule of the taxable property of said corporation, to be signed and sworn to by the Secretary, or other officer of said corporation, which list or schedule shall contain, 1st, a description of all the real property owned or occupied by such corporation in each county, city or town, through which such road may run; and the actual value of each lot or parcel of land, including the improvements thereon, except the track or superstructure of said road, shall be annexed to the description of such lot or parcel of land.

"2nd. Said list shall also set forth the number of acres taken for right of way, stations, or other purposes, for each tract of land through which said road may run, describing said land as near as practicable, in accordance with the surveys of the United States, giving the width of the strip or parcel of land; also, the whole number of acres, and the aggregate value thereof, in said county, city or town.

"3d. Said list shall also set forth the length of the main track, and the length of all side tracks, and turnouts to each county, city and town through which the road may run, with the actual value of the improvements at each of the several stations, when said stations are not a part of city or town lots.

"The said stations and property shall be denominated 'fixed and stationary personal property.'

"4th. Said list shall also contain an inventory of the rolling stock of said company, with the value thereof, and also the value of all other personal property owned by said company in each county, city or town in this State. Said list of rolling stock shall set forth total amount and value of all the rolling stock belonging to said company, whether in this State or not, and also the length of the whole of the main track of said road, whether in this or another State.

"Said rolling stock shall be listed and taxed in the several counties, cities and towns of the State *pro rata*, in proportion as the length of the main track in such county, city or town bears to the whole length of the road.

"All other property shall be listed and taxed in the county, city or town where the same is located or used.

"Sec. 7. The property of all railroad corporations shall be

liable to taxation for municipal purposes, as well as county, State, and other general purposes, the same as the property of private individuals, and for this purpose such municipal corporations shall have access to the list or schedule required to be furnished to the county Auditor for the purpose of ascertaining the proper valuation of the property of said company within said corporation, and the *pro rata* share of the valuation of the rolling stock of the company, and in case the company shall not have made return of a list or schedule of their property as hereinbefore required, then the municipal authorities shall assess the property of said corporation at what to them shall seem just and proper from the best information at their command."

RUSSELL BILL

"Section 1. *Be it enacted by the General Assembly of the State of Iowa*, That each railroad company owning or operating a railroad in this State, shall annually on or before the fifteenth day of February of each year make out and file with the treasurer of State, a sworn statement, setting forth: First — The amount of gross receipts of their railroad, without reduction of expenses, for the year ending on the thirty-first day of December preceding. Second — The number of miles of main track of their railroad in each county on the thirty-first day of December preceding, which said statement shall be sworn to by the president and secretary of such company and by the general superintendent of their railroad. And the treasurer of State shall levy on said gross receipts a tax of one per centum when they do not exceed the sum of three thousand dollars per mile per annum, and when said gross receipts exceed the sum of three thousand dollars per mile per annum, and are less than four thousand dollars per mile per annum, the treasurer of State shall levy on the entire gross receipts a tax of two per centum. And when said gross receipts exceed the sum of four thousand dollars per mile per annum, the treasurer of State shall levy a tax of three per centum on the entire gross receipts, and when the entire gross receipts per mile per annum exceed the sum of five thousand dollars, the treasurer of State shall levy a tax of four per centum on the entire gross receipts, which the said railroad com-

panies shall pay on or before the first day of March, after which time the said taxes shall become delinquent and the same penalties and interest shall attach as on other taxes. After the said taxes become delinquent, the treasurer of State shall proceed to collect the same, in the same manner and with the same rights and powers as a sheriff may on execution; one-half of said taxes levied and collected as aforesaid shall be paid into the school fund of the State and distributed annually as other school funds, and the remaining one-half shall remain in the State treasury, to be used as the general revenue of the State. If any railroad company shall fail to furnish the sworn statement required by this Act, the treasurer of State shall ascertain as near as may be the amount of the gross earnings of such delinquent company and assess thereupon the said per centum as heretofore provided, and shall seize and levy upon the whole or any part of the property, rights, and franchises of said company, and after giving ten days public notice of the time and place of sale, shall proceed to sell the same at public auction to satisfy the amount of said assessment, together with all costs and expenses incurred in making the assessment and sale. When the Treasurer of State has to incur any expense either in the assessment or collection of said taxes, after they become delinquent, he shall add one per centum on the amount of taxes due, which shall be his compensation for said assessment and collection. The taxes herein provided for shall be in lieu of all taxes for any and all purposes on the road-bed, track, rolling stock and necessary buildings for operating their road, except as hereinafter provided. But other property belonging to such company, whether personal or real, shall be taxed as property of individuals in the respective counties in which the same may be situated.

“Sec. 2. It shall be unlawful for any railroad company to charge any portion of the taxes provided for in this act against any party on freight bills as a separate item in said bills, and if any railroad company shall violate the provisions of this section, either directly or indirectly, by making a specific charge for the amount of taxes they shall forfeit to the parties interested the whole amount of said freight bills.

“Sec. 3. All railroads which are now in process of construction, or which shall be hereafter constructed, within this State,

shall have exempted from the taxation heretofore specified, each successive twenty-five miles of railroad built after the passage of this act, for three years from the time that each successive twenty-five miles of road is actually ready for running and operation. At the expiration of the three years, herein specified, said new railroad shall be subject to the same taxation, and to the same regulations, and penalties in all respects as required by the preceding sections of this act. A statement setting forth the date when any twenty-five miles of new railroad was first operated, and claiming exemption from taxation shall be furnished to the treasurer of State, and sworn to by the president and secretary of the railroad company, and by the general superintendent of the railroad which shall be sufficient evidence to warrant the treasurer of State, in exempting said railroads from taxation each year until the expiration of the three years herein before specified.

"Sec. 4. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Iowa State Register and Des Moines Bulletin, papers published in Des Moines."

Mr. Mahin said that "a tax on the earnings is in a great measure a tax upon industry instead of a tax on capital. The capital and wealth of a country should be subject to tax, but not its labor and skill."

⁷⁵ *Des Moines Daily Bulletin*, No. 102, April 30, 1870. On the point of tax distribution Mr. Cutts said:

"In regard to the division of the tax, the bill provides that one-half shall go to the State, and the other half to the county. Upon that question there was some division in the committee. Many thought that that was too large a portion to go to the State, that other property contributed perhaps no more than about one-tenth of the tax levied in the State of Iowa to the State. Whereas this bill provides that one-half the total amount levied should go to the State. Upon the other side it was argued in this way. That it is true that the ordinary amount of tax levied is divided, so that only about one-tenth goes to the State; the remainder is divided among the counties of the State, for bridges, schools and other local purposes. But there are a large part of the counties in the State that have no railroads, and do not expect any for a

considerable time, if ever. They contribute by their patronage to the support of these railroads, and if the tax was divided as other taxes are divided, these counties would not get a fair proportion of the benefit of this tax upon railroads.

"The majority of the committee, after due consideration, reported in favor of simply dividing it equally."

⁷⁶ *Des Moines Daily Bulletin*, No. 108, May 7, 1870.

⁷⁷ *Des Moines Daily Bulletin*, No. 108, May 7, 1870. Mr. Lacey spoke in the following terms on the subject of railway tax distribution:

"If you take the map of Iowa and look over it, you will find that the county of Buchanan, with a population of fourteen thousand, has a railroad running directly through it, while Fayette county on the north has a railroad merely touching one corner of it. Now, if you adopt the Hopkirk bill, Buchanan county will obtain a tax on about twenty miles of railroad, for municipal, county and other purposes, while the county of Fayette will obtain a tax upon only two miles. Now, who supports this railroad in Buchanan county? There are sixteen thousand people in Fayette county, every one of whom aids to support the railroad in Buchanan county, and therefore it does more to support that railroad than does the county of Buchanan itself.

"You take the county of Clarke, with a population of eight thousand, and Decatur on the south with a population of ten thousand, and you find that the population of Decatur county furnishes its support to the railroad running through Clarke county. If you adopt the Hopkirk bill the county of Clarke, with a railroad running through the entire length of the county, gets almost the entire tax from the railroad which Decatur county helps to support.

"You take the county of Union with a population of five thousand, and the county of Ringgold with a population of five thousand, and the same principle is true. It will also apply in the case of Monroe and Appanoose counties. Appanoose county, with fourteen thousand inhabitants, has but a short line of railroad, while Monroe county has twenty-four miles of railroad, with twelve thousand inhabitants. Under this bill Monroe county will obtain all

the benefit from the road, which equally derives its support from the inhabitants of Appanoose county."

⁷⁸ *Des Moines Daily Bulletin*, No. 111, May 11, 1870.

⁷⁹ *Des Moines Daily Bulletin*, No. 112, May 12, 1870. The following statements of Mr. Murdock are noteworthy:

"You all know very well that all your general laws must be uniform; you cannot fix one portion of the bill to apply to one class of property in one portion of the State, and then have another portion of the bill apply to the same class of property in another portion of the State, and both different. If it can be done, then let someone who is a friend to the bill tell me what this provision of the Constitution means when it says that 'all laws of a general nature shall be uniform in their operation.' In addition to that tell me why the Constitution provides that the Legislature shall not grant privileges and immunities to one portion of the citizens of this State that are not equally enjoyed by all the other citizens of the State."

⁸⁰ *Des Moines Daily Bulletin*, No. 111, May 11, 1870. The views of Mr. Rowell on the question of railway tax distribution should be carefully noted by the reader. He spoke as follows:

"The point is this: that in taxing railroads upon their assessed value the entire assessment goes to the particular locality. It is true there will be two mills or two and a-half mills according to the State assessment that will go to the State at large, but with that exception, and the amount that goes to the county at large, all the tax falls right to those particular townships and municipalities through which the road passes.

"Now I say it is a matter of injustice to the county. It would be a pretty nice thing for those large towns through which a railroad passes, when they come to levy the tax; but as a matter of right to the county itself, the tier of townships through which a railroad passes are no more entitled to the assessment on that capital stock than any other township in the county. They have done no more; they have sacrificed no more. It is true, they gave the right of way but they have been paid for it; but that does not add anything to the right. When you come right down to the fact you are driving a large amount of assessed property into a

particular channel when you allow the people of a particular locality to derive the entire benefit of a tax to the exclusion of others who are themselves worthy, who have sacrificed just as much in procuring the road, and who have done no wrong in driving it away from them at all. The only justice there is in the matter, if the entire people are interested, is that the State shall unite in a plan of taxation by which the entire State shall receive the benefits of the taxation."

⁸¹ *Des Moines Daily Bulletin*, No. 113, May 13, 1870.

⁸² *Senate Journal*, 1870, pp. 264, 265.

⁸³ *Des Moines Daily Bulletin*, No. 78, April 2, 1870.

Senator Fairall estimated the land grants made to the railroads at 7,331,208 acres. The *Report of the State Land Department*, 1901, gives 4,802,878.50 acres.

⁸⁴ *Des Moines Daily Bulletin*, No. 78, April 2, 1870.

⁸⁵ *Daily Iowa State Register*, Vol. IX, No. 63, March 16, 1870.

⁸⁶ *Des Moines Daily Bulletin*, No. 78, April 2, 1870.

⁸⁷ *Des Moines Daily Bulletin*, No. 78, April 2, 1870.

Speaking of the proper method of determining the value of railroad property, Senator Patterson said that it could not be done "except on one basis. If they go to put on such a valuation the first thing they will inquire for is the gross earnings of the road, in order to fix its value. *And it is on the basis of earnings, and earnings alone that any just value can be fixed.* You must either take the gross or net earnings. The net earnings are too liable to fluctuate from improper expenditure or mismanagement, and the gross earnings are the more correct and substantial basis. So gentlemen, after all, you are obliged to go to the gross earnings as the basis of just taxation. Why not, then, put it on that basis, as proposed in the bill reported by the Committee?"

⁸⁸ *Senate Journal*, 1870, p. 319.

⁸⁹ *Senate Journal*, 1870, p. 417.

CHAPTER XIX

⁹⁰ Fairall's *Manual of Iowa Politics*, Vol. I, p. 86.

⁹¹ Fairall's *Manual of Iowa Politics*, Vol. I, p. 87.

⁹² Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, p. 334.

⁹³ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, p. 335.

⁹⁴ The tone of the Governor's message is altogether conservative. These are his words:

"The question as to the mode of raising these taxes has been much discussed, and that now prevalent in this State has been more or less severely criticised. I am, however, of the opinion, that it is the most practicable method yet devised for the purpose. But, in order that this sort of property should bear its just proportion of the public burdens, it is only proper that the tax now levied upon gross earnings, should be increased. . . . The property paying this tax is estimated by the Treasurer of State as worth \$75,000,000. To correspond with the assessment of other property, it would probably be valued for revenue purposes at some \$30,000,000. The tax obtained from railroads, therefore, is equal to about six and a quarter mills on what, under the estimate adopted, would be the assessed value of this kind of property. I have elsewhere given the average tax throughout the State for the same year at $3\frac{1}{8}$ per cent., or about five times that contributed by railroad property. . . . This state of affairs, I submit, can readily be remedied without imposing any undue burdens upon existing lines, or crippling new enterprises." — Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, p. 369.

⁹⁵ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. IV, pp. 24, 25.

⁹⁶ The bills introduced during this session have such an important bearing on the railway tax history of Iowa that at least two of them should be copied in full for the benefit of the special investigator. *House File*, No. 91, by Mr. Gear, and *House File*, No. 279 by Mr. Duncombe, became the storm center of a prolonged controversy. The writer has been unable to obtain a copy of the original *House File*, No. 279, but the substitute for the same as presented by the Committee on Railroads is given below. This bill as amended by the House and Senate became the ad valorem tax law of 1872.

SUBSTITUTE FOR HOUSE FILE NO. 279

“Section 1. Be it enacted by the General Assembly of the State of Iowa, That it shall be the duty of the Census Board, during the month of March in each year, to assess the value of all the property of each railroad company in this State, excepting the lands, lots, and other real estate of a railroad company not used in the operation of their respective roads.

“Sec. 2. That for the purpose of enabling said board to arrive at a fair and just valuation of the railroad property to be taxed by virtue of this act, it shall be the duty of the president, vice-president, or general superintendent, and of such officers as the Census Board may designate of any railroad company owning, leasing, or operating any railroad within this State, to furnish said board on or before the 15th day of February in each year, a statement, signed and sworn to by such officer or officers, which statement shall embrace in detail,

“1. The whole number of miles owned, operated, or leased in the State by any railroad company making the return.

“2. The number of miles owned, operated, or leased by such company, with a detailed statement of all property of every kind located in each county in the State.

“3. Also a detailed statement of the number of engines, passenger, mail, express, baggage, freight, and other cars used in operating such railroad in this State, and on roads which are part of lines extending beyond the limits of this State; the return shall show the average amount of rolling stock in use on the company's line in the State during the year for which return is made. The return shall show the amount of rolling stock, the gross earnings of the entire road operated by the company, and the gross earnings of the road in this State, and all property designated in section 3 of this act. And such other facts as the Census Board shall in writing require.

“Sec. 3. The said property shall be valued as other property throughout the State is valued, and such assessment shall be made upon the entire road within the State, and shall include the right of way, road-bed, bridges, culverts, rolling stock, depots, station grounds, shops, buildings, gravel beds, and all other property, real and personal, exclusively used in the operation of such railroad.

In estimating the value of said railroad and its equipments, the said Census Board shall take into consideration the gross earnings per mile for the year ending January 1st then last past, and any and all other matters necessary to enable said Census Board to make a just and equitable assessment of said railroad property. If a part of any railroad is without this State, then in estimating the value of its rolling stock and movable property, they shall take into consideration the proportion which the business of that portion of the road lying within the State bears to the business of the road without the State.

“Sec. 4. The Census Board, after such assessment is completed, shall transmit to the board of supervisors of each county through which, or any part of which, any of said roads run, a statement of the amount of the assessment per mile of said property, which statement shall also show the length of main track of road within such county. Said statement shall be entered upon the proper records of said several counties.

“Sec. 5. It shall be the duty of the board of supervisors of said counties, at their first meeting after receiving such statement, to make and enter in the proper record an order stating and declaring the length of the main track of such road within each city, town, township, and lesser taxing districts in said county through which said road runs, and the taxable value per mile of said road, as fixed by a pro rata distribution of the amount assessed by the Census Board, which aforesaid order shall constitute the taxable value of said property for taxable purposes. And the amount due each city or incorporated town under the provisions of this act, shall be paid over, when collected by the county treasurer, to such city or town, and the board of supervisors shall transmit a copy of said order to the city council or trustees of each city or incorporated town or township.

“Sec. 6. All such railroad property shall be taxable upon said valuation, at the same rates, by the same officers, and for the same purposes as the property of individuals within such counties, cities, towns, townships, and lesser taxing districts.

“Sec. 7. All laws in force relating to the enforcement of the payment of delinquent taxes shall be applicable to all taxes levied under the provisions of this act, and whenever any taxes, levied

under this act, shall become delinquent, the county treasurer, having control of such delinquent taxes, shall proceed to collect the same, in the same manner, and with the same right and power, as a sheriff under execution, except that no process shall be necessary to authorize him to seize and sell engines, cars, or any other rolling stock for the collection of said taxes.

"Sec. 8. Lands, lots, and other real estate belonging to any railroad company not exclusively used in the operation of the several roads shall be subject to assessment and taxation the same as other similar lands in the several counties wherever situated.

"Sec. 9. Every railroad company which shall have paid all taxes on gross earnings provided for by chapter 106, of the acts of the thirteenth general assembly, shall be released from the payment of all other taxes which may have been levied upon the road-bed, right of way, track, rolling stock, and necessary buildings for operating their road, and no taxes for prior years, for State, county, municipal, or any other purpose for which any tax can be levied under the laws of the State, up to the first day of January last, shall be collected from any such railroad company on such property.

"Sec. 10. No provision of this act shall be held to apply to any railroad bridge across the Mississippi or Missouri river, but such bridges shall be assessed and taxed on the same basis as the property of individuals.

"Sec. 11. In case the proper officer of any railroad company shall fail to make the statement under oath herein named, the Census Board shall proceed to assess such railroad property, and shall add thirty per cent to the assessable value thereof.

"Sec. 12. *Provided*, That for the tax of 1872 the return under oath shall be by the first day of June next, and the board of supervisors shall perform the requirements of this act at their September meeting in September next, and the assessment for the year shall be made in the month of July next, by the Census Board.

"Sec. 13. All laws and parts of laws inconsistent with the provisions of this act are hereby repealed.

"Sec. 14. This act being deemed 'of immediate importance, shall take effect after publication in the Daily State Register and Daily Leader, newspapers published in the city of Des Moines.'" — See *House Journal*, 1872, p. 390.

HOUSE FILE No. 91, BY GEAR

"Section 1. *Be it enacted by the General Assembly of the State of Iowa*, that the Census Board of this State shall, for the purpose of this act, be and are hereby constituted a Board of Commissioners, whose duty it shall be to assess all the railway property in this State, as hereinafter provided.

"Sec. 2. Such assessment shall be ascertained in the following manner, to wit:

"*First* — All the property lying and situated within the right-of-way of any railroad within this State, which shall include all building[s], depots, road bed, bridges, and single and double main tracks, which shall, for the purposes of this act, be treated as real estate, and known and designated as class 'A' of railway property, and in arriving at the valuation of this class, it shall be the duty of the said commissioners to take into consideration, among other things, the gross earnings per mile of each company liable to taxation under this act.

"*Second* — All property, consisting of engines, passenger, mail, express, baggage, freight, or other cars, and all tools used in operating any such railway, shall be treated as personal property, and known and designated as class 'B' of railway property.

"Sec. 3. Said commissioners shall assess the value of the property known as class 'A' in this act, by the mile and shall certify the amount so assessed, together with that known as class 'B', to the Auditor of State, on or before the first day of April in each and every year hereafter.

"Sec. 4. It shall be the duty of the Auditor of the State to certify, on or before the first day of April in each and every year hereafter, the value of the property known herein as class 'A' and class 'B', to the board of supervisors of the several counties in this State, which may have railways within their limits, in the following manner, to wit:

"*First* — The number of miles, and fractional parts thereof, within the limits of the county so notified, and the assessed value thereof per mile, as fixed by the said board of commissioners.

"*Second* — Also a pro rata proportion, the value of class 'B', which proportion shall be as the number of miles of railroad within the limits of such county shall bear to the whole number of miles of each railroad taxed under the provisions of this act.

"The valuation of class 'A' and class 'B', shall be placed on the assessment rolls of the county to which they may be sent, and the board of supervisors shall cause to be levied upon such assessment the same percentage of taxation that is levied against any other property of the same nature, which amount so levied shall be collected in the same manner, and be subject to the same penalty as other property, and the taxes so levied and collected, under the provisions of this act, shall be distributed to the several funds, as the proceeds of all other taxes are now distributed.

"Sec. 5. For the purpose of enabling said board of commissioners to arrive at a fair and just valuation of the railway property intended to be taxed by virtue of this act, it shall be the duty of the president, vice-president, or general superintendent of any railway company, owning, leasing, or operating any railway within this State, to deposit, on or before the first day of January, in each year hereafter, with the Auditor of this State, for the use of the board of commissioners, created by this act, a sworn statement, which statement shall embrace in detail, all property known, designated, and enumerated as class 'A' and class 'B', in section two of this act.

"*Second* — A detailed statement of gross earnings per mile, also the sources from which said earnings are derived, and the cost per mile of operating the same.

"Sec. 6. Any railway company failing to make the sworn statement required in section 5 of this act, shall be assessed by the said board of commissioners, as may by them be deemed proper and just, and the said commissioners are hereby authorized and required to add to the amount so assessed, against any railway company, thirty per cent, as a penalty for such failure.

"Sec. 7. Whenever any taxes, levied under this act, shall become delinquent, the county treasurer, having control of such delinquent taxes, shall proceed to collect the same, in the same manner, and with the same right and power, as a sheriff under execution, except that no process shall be necessary to authorize him to seize and sell property for the collection of said taxes.

"Sec. 8. Nothing in this act shall be construed to prevent cities or incorporated towns from taxing railway property within their respective limits, as other property is taxed, in cities and incor-

porated towns in this State, but no valuation of class 'A' shall be assessed by cities and incorporated towns at a higher valuation than that fixed by the board of commissioners.

"Sec. 9. All acts or parts of acts conflicting with the provisions of this act are hereby repealed." — Copied from the *Daily Burlington Hawk-Eye*, February 3, 1872. See also *House Journal*, 1872, p. 146.

⁹⁷ Larrabee's *The Railroad Question*, pp. 205-230.

An editorial entitled *Railroad Taxation* shows clearly the situation at the opening of the Fourteenth General Assembly. The editorial reads in part as follows:

"What to do, and how to do it properly, with justice and equity to both the people and the railroads, in the matter of taxation, is the subject of most serious consideration with the members of the General Assembly at the present time. A multiplicity of bills have been introduced in the Senate and House betokening legislation of an unfriendly nature, some of them grossly oppressive to the roads, while others intend to fix a cushion more downy than the common tax payer enjoys. . . . In the necessity for legislation for railroads, the fact must be borne in mind that on the further construction of these thoroughfares of commerce the growth of the State, in the newer and more sparsely settled sections, in a great measure depends, and that by the adoption of unfavorable and oppressive measures the building of them will be summarily put at an end." — *Daily Iowa State Register*, Vol. XI, No. 42, February 17, 1872.

⁹⁸ *Daily Burlington Hawk-Eye*, February 3, 1872.

⁹⁹ Regarding the subject of assessment, the editorial contains the following:

"Besides this it leaves the assessment to those who know nothing about the values or rather it limits the valuation to cost, and less, while all other property, and this corporate property so far as it consists of land, increases, and is equally unjust in its distribution of taxes on the personal property. We have to discuss this latter question at present, but we protest against it as violating all the rules which govern and ought to govern the assessment of taxes." — *Daily Burlington Hawk-Eye*, February 3, 1872.

¹⁰⁰ *Dunleith and Dubuque Bridge Co. vs. the City of Dubuque*, 32 Iowa, 427.

¹⁰¹ *Daily Iowa State Register*, Vol. XI, No. 42, February 17, 1872.

¹⁰² *House Journal*, 1872, p. 390. See note 104.

¹⁰³ *House Journal*, 1872, p. 392.

The writer has been unable to secure a copy of this important amendment which was introduced as a substitute to the committee's bill.

¹⁰⁴ *Daily Iowa State Register*, Vol. XI, No. 57, March 9, 1872.

¹⁰⁵ *Daily Iowa State Register*, Vol. XI, No. 57, March 9, 1872.

¹⁰⁶ *Daily Iowa State Register*, Vol. XI, No. 58, March 10, 1872.

¹⁰⁷ *House Journal*, 1872, p. 394.

¹⁰⁸ *House Journal*, 1872, p. 403.

¹⁰⁹ *House Journal*, 1872, pp. 407-410.

¹¹⁰ *House Journal*, 1872, pp. 422-424.

¹¹¹ *House Journal*, 1872, p. 424.

¹¹² *House Journal*, 1872, pp. 424-426.

¹¹³ This quotation was taken from a letter signed by John C. Bills, Mayor of Davenport, which evidently appeared in the *Davenport Gazette* of March 14, 1872, but the writer was unable to get access to this paper.

¹¹⁴ The portion of the editorial not quoted in the text reads as follows:

"Not only are those members who support this bill, Mr. Gear's bill, or any bill like either, guilty of a deliberate and palpable violation of the constitution, but they are also trampling upon the platforms of the parties by which they were elected. . . . Thus we see that every member of the House not only turns his back upon the Constitution, and treats its plainest and most positive command with supreme contempt, but he also violates the most recent expression of the whole people in convention, when he votes in favor of this scheme to take money from the people already theirs, and to heap additional burdens upon them by compelling them

to pay that share of the taxes which the constitution declares should be borne by these huge and rapacious corporations."— *Daily Burlington Hawk-Eye*, March 16, 1872.

¹¹⁵ In another editorial the *Daily Burlington Hawk-Eye* said:

"Following the proceedings of the Legislature as published in The Hawk-Eye this morning will be found the railroad tax bill, on which the House has been engaged for several days, and which was finally ordered engrossed on Tuesday by so large a majority as to make its passage by that body a certainty. What the fate of the bill in the Senate will be we have no means of predicting. The bill was prepared, as we learn, by the railroad attorneys at Des Moines, and is being urged with extraordinary zeal by the railroad interests of the State, as represented at the Capital.

"The bill provides for the assessment of all railroad property by the Census Board, thus taking the matter out of the hands of the people and virtually putting it into the hands of the railroad companies themselves. The practical operation of the bill would be to exempt from taxation in all the cities and larger towns all accumulations of railroad property; and the taxes being divided pro rata according to the number of miles of new track in each county, is exceedingly unjust to the older counties and altogether in favor of those that are new and sparsely settled.

"We have not time now to comment on the various features of the bill, but by carefully studying it our readers will see how cunningly devised it is and how completely the railroads interests have taken possession of the House on this question."— *Daily Burlington Hawk-Eye*, March 14, 1872.

¹¹⁶ The letter referred to is so clear and comprehensive in its treatment of many vital points that it should be given in full. From the standpoint of fact as well as prophecy, it forms an instructive document.

"Through four mortal days the people of Iowa, through one branch of the public service—the House of Representatives—have been wrestling with railroads. The battle was not an ambushade, but was planned for with boldness, and the grapple has been severe and protracted. Although the decisive vote, at this writing, has not been taken, yet the passage of the measure is

assured. As an example of cunningly-arranged words it has few equals in literature, having evidently been drafted by a master mind in railroad interests. This shrewdness cropped out after the bill had been under consideration for a time, when it appeared that almost inadvertently the members from the country were voting and acting in direct opposition to the city members. How plainly the reason for this stood out upon sifting the clause that provided for an assessment of the road as a unit, along its entire length, and then making a *pro rata* distribution by the State, in the counties. That is to say, if the Chicago, Rock Island & Pacific Railroad Company own property assessed at \$3,000,000, and operate 300 miles of road in Iowa, it would give a basis of assessment of \$10,000 per mile throughout the State. Here is Davenport, with \$500,000 worth of that property, and perhaps only two miles of track in its corporate limits. Hence, in the matter of assessment, it would only receive credit for an assessment of \$20,000, while a bare, open prairie township, with perhaps not a dozen houses in its limits yet of six miles breadth, would be entitled to \$60,000 as the basis of assessment, or three times as much as the city of Davenport. The injustice of this is apparent at once. It costs those townships nothing, comparatively speaking, to have the railroads run through them, while in the cities these corporations get the benefit of the police force to guard their property, the lighting of streets and the repairs of the same leading to their depots and freight houses, and of all the provisions made for the extinguishment of fires, and the expense attendant upon the maintenance of the same. By this law, the levy of the city of Keokuk on the D. V. R. R. property would not be more than one-third as much as would be that of some private township in Jasper or Marion counties. How unjust this seems, when taken in connection with the fact that lots of these cities are 'sitting in the ashes' to-day by reason of the aid voted to these very roads that they are now denied the privilege of taxing by a fair assessment. And how natural that this feature of the bill should gain for it earnest friendships from the interior of the State, and that between the jealousy thus incited between the two factions spoken of — city and country — the railroads should quietly march to an easy success. So adroitly was it planned, and so deftly was the intent of

this warp and woof of the bill displayed to the consideration of the gentlemen from the rural districts, that as the discussion went on, notwithstanding the most able appeals for justice in this behalf were made by the best speakers on the floor, still the tide steadily set toward the endorsement of the bill, and each succeeding day found more votaries in the line of its conquest. But the great protest came in against the retention of Section nine of the bill, which I submit below. The striking out of this feature was plead for earnestly by the representatives of every large city in the State. Mr. Ballinger of your city made a fine appeal in behalf of Iowa cities, who in their desire to further railroad enterprises have burdened themselves with enormous loads of debt and taxation. And this section proposes to remit all delinquent taxes in favor of the roads, notwithstanding the Supreme Courts of our State have decided that such unpaid taxes were collectable and must be paid. I judge this section will mean very little however, if it shall be construed into an attempt to override the decision of our highest legal tribunal. But to the Section:

“Sec. 9. Every railroad company which shall have paid all taxes on gross earnings provided for by chapter 106 of the acts of the Thirteenth General Assembly, shall be released from the payment of all other taxes which may have been levied upon the road-bed, right of way, track, rolling stock, and necessary buildings for operating their road, and no taxes for prior years, for State, county, municipal, or any other purpose for which any tax can be levied under the laws of the State, up to the first day of January last, shall be collected from any such railroad company on such property.

“Really, this section needs no word of comment to elucidate the fact that it is squarely in the interest of railroads, that the interests of the people in the future as in the past must be subservient to these corporations. Iowa has yet her ‘Camden and Amboy’ lesson to learn, and may hap the warming into life that she has given these railroad interests will create the consuming fire, the outcome of which shall be ashes — bitterness.

“In my next I may take up another phase of this railroad question. We shall see how the bill fares in the Senate to which it goes with many misgivings and fears.” — *Daily Gate City* (Keokuk), Vol. XIX, No. 12, March 14, 1872.

The same correspondent in a separate issue writes the following concerning the action of the Senate:

"The bill as passed by the Senate provides for returns of railroad companies to be made to the State Census Board of all their property, for the assessment of such property at its cash value the same as the property of individuals; such valuation to be divided among the different counties, townships, and other taxing districts, according to the number of miles of railroad in each; and all the taxes of such districts to be levied upon such valuation; and repeals all prior laws upon the subject, and remitting uncollected taxes thereunder. It will be seen that the Senate conclusions do not differ materially from the action of the House, and the same spirit of unfairness towards the cities and towns is manifest in their action. Under a fair rule of assessing—a rule that would 'render unto Caesar the things that are Caesar's'—the city of Davenport would be entitled, from the Chicago, Rock Island & Pacific Railroad Company, [to] \$5,268.20; while under the present law the same city will receive less than \$800, while the remainder will go into the coffers of the rural sections—a disposal manifestly unjust.

"And it is a law the repeal of which will be hard to compass. For it is evidently in the interest of the rural districts and smaller towns, and as the rapid growth of State representation is more noticeable in these than in the river towns and cities, of course it is an injustice that will, on the very score of self-interest, be self-perpetuating. If the discrimination is in behalf of the prairie sections of the State this year in a ratio of three to five, in four years it will be as four to five. It will puzzle the shrewd men of the East to cipher themselves out of this dilemma. Who wants the conundrum first."—*Daily Gate City* (Keokuk), Vol. XIX, No. 33, April 7, 1872.

¹¹⁷ *Daily Ottumwa Courier*, Vol. VII, No. 168, March 14, 1872.

¹¹⁸ *Daily Iowa State Register*, Vol. XI, No. 77, April 3, 1872.

¹¹⁹ *Senate Journal*, 1872, p. 364.

¹²⁰ The vote was thirty-two for and sixteen against.—*Senate Journal*, 1872, p. 452.

¹²¹ *Senate Journal*, 1872, p. 461.

Before the bill came to a final vote, a motion was made by Senator Richards to the effect "that nothing in this section contained shall relieve any railroad property from special assessments levied by any city." On this motion the vote stood 14 for and 33 against. — *Senate Journal*, 1872, p. 459.

¹²² See note 96, p. 410.

¹²³ *Laws of Iowa*, 1872 (Public), p. 29.

¹²⁴ *Code of Iowa*, 1897, p. 472.

¹²⁵ 32 Iowa 427.

CHAPTER XX

¹²⁶ *Daily Gate City* (Keokuk), Vol. XIX, No. 33, April 7, 1872.

¹²⁷ *Code of Iowa*, 1873, p. 20.

¹²⁸ *Code of Iowa*, 1873, p. 241.

¹²⁹ *Senate Journal*, 1878, p. 399.

¹³⁰ *Laws of Iowa*, 1878, pp. 100, 101.

¹³¹ The writer does not wish to be understood as under-estimating the movement for reform that really did exist. The cities especially were complaining of the measure. Many people felt that it was unjust in its operation. The fact is that the agitation was not strong enough to control the action of the legislature.

¹³² Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VII, p. 25.

¹³³ *Laws of Iowa*, 1900, p. 27.

¹³⁴ *Laws of Iowa*, 1902, p. 34.

¹³⁵ *Laws of Iowa*, 1902, pp. 36, 37.

¹³⁶ *Journal of the House*, 1902, p. 376.

¹³⁷ *Journal of the Senate*, 1902, p. 1186.

¹³⁸ *Inaugural Address of Governor A. B. Cummins*, January 16, 1902, p. 17.

¹³⁹ *Laws of Iowa*, 1902, p. 37.

¹⁴⁰ During the Thirtieth General Assembly a law was passed entitled, "An Act requiring railway and other corporations owning real estate to report the same to the executive council for assessment and amending the law as it appears in section thirteen hundred thirty-four (1334) of the supplement to the code."—*Laws of Iowa*, 1904, p. 39.

¹⁴¹ *Supplement to the Code of Iowa*, 1907, p. 269.

¹⁴² *Laws of Iowa* (Public), 1872, p. 29.

¹⁴³ See above pp. 133-138.

¹⁴⁴ *Inaugural Address of Governor A. B. Cummins*, January 16, 1902, p. 15.

¹⁴⁵ The following is a copy in part of *Senate File*, No. 290, introduced by Senator Junkin March 3, 1902:

"*Be it Enacted by the General Assembly of the State of Iowa:*

"Section 1. Paragraphs ten (10), eleven (11), and twelve (12) of section thirteen hundred and thirty-four (1334) of the code are hereby repealed, and the following enacted in lieu thereof, and in addition thereto:

"10. The gross earnings of the entire railway and the gross earnings in each state in which the railway is operated.

"11. The operating expenses, exclusive of sinking fund and as defined in section thirteen hundred and thirty-five (1335) of the code, as amended by this act, of the entire railway and the same for each state in which the railway is operated.

"12. The net earnings of the entire railway and the net earnings in each state in which the railway is operated.

"13. The taxes paid on the entire railway and the taxes paid in each state in which the railway is operated, and the amount of special assessments, if any, stated separately.

"14. The amount of money, stocks, bonds and current assets of whatever nature on hand, in the treasury, or in the possession of the officers or agents of the railway company or of any trustee or receiver, and all other assets not hereinbefore specifically mentioned, including the amount of sinking fund, if any, stated separately.

"15. The number of shares of its stock and the par value there-

of, and if the same consist of different classes, the number of each class, and the par and market value thereof, or if there is no market value, then the actual value of each share; the amount of its funded and floating debt, and the market value, of any of such indebtedness, or if there is no market value, then the actual value; the number, amount and market value, or if there be no market value then the actual value, of any unpaid bonds or other indebtedness secured by mortgage or other lien on the property or earnings of said railway.

"Sec. 2. Section thirteen hundred thirty-six (1336) of the code is hereby repealed, and the following is enacted in lieu thereof:

"The railway property of this state, tangible and intangible, exclusive of the property described in section thirteen hundred and forty-two (1342) of the code, shall be valued at its actual value and shall be assessed at twenty-five per centum of such actual value, which shall be considered as the taxable value of such property and the value at which it shall be listed and upon which the levy shall be made. The actual value of such railway property shall mean its value in the market in the ordinary course of trade.

"The executive council in determining such valuation, shall take into consideration the sum of the market or actual value of the stocks, bonds and securities of each railway, the gross earnings, the net earnings, the physical condition of such railway within the state, and the information furnished by the reports required to be made, together with any other matter necessary to secure a just and equitable assessment.

"When only a part of a railway lies in this state, that part of the value of the entire railway which is measured by the proportion of the length of the particular railway in this state to the whole railway, shall be considered in estimating its value in this state for taxation purposes within the state."

¹⁴⁶ The following statement appears in the *Iowa State Register*:

"The senate ways and means committee plan devised by Senators Junkin, Healy, Lewis and Porter and understood to be in conformity with the views of Governor Cummins:

"The railway property of this state, tangible and intangible, exclusive of the property described in section 1342 of the code, shall be valued at its actual value and shall be assessed at 25 per cent

of such actual value, which shall be considered as the taxable value of such property and the value at which it shall be listed and upon which the levy shall be made. The actual value of such railway property shall mean its value in the market in the ordinary course of trade.

“The executive council in determining such valuation shall take into consideration the sum of the market or actual value of the stocks, bonds and securities of each railway, the gross earnings, the net earnings, the physical condition of such railway within the state, the information furnished by the reports required to be made, together with any other matter necessary to secure a just and equitable assessment.

“When only a part of a railway lies in this state, that part of the value of the entire railway which is measured by the proportion of the length of the particular railway in this state to the whole railway, shall be considered in estimating its value in this state for taxation purposes within the state.

“Senator J. J. Crossley’s plan, for which he and Senator Trewin voted in senate ways and means committee, and which is known to express the views of Lieut. Gov. John Herriott:

“The railway property of this state, tangible and intangible, exclusive of the property described in section 1342 of the code, shall be valued at its actual value and shall be assessed at 25 per cent of such actual value, which shall be considered as the taxable value of such property and the value at which it shall be listed and upon which the levy shall be made. The actual value of such railway property shall mean its value in the market in the ordinary course of trade.

“The executive council shall determine such valuation by taking the sum of the market value of stocks, bonds, and securities of each railway company as shown by the quotations of selling prices secured as hereinafter provided for; but if the value so determined is manifestly unjust, either in excess of, or less than, the true market value of said railway then said council shall lower or raise the valuation, as circumstances justify. Whenever the stocks, bonds, or securities of a railway company are not listed for sale in the markets where such securities are regularly sold and no quotations of prices are certified to the council by the officers of the company

in their annual report as herein required and the same are not otherwise obtainable, then the said council shall determine the value of the property of said railway by capitalizing at the current rate of interest the net earnings of said railway arrived at by deducting from the gross receipts or income, the operating expenses of said railway as the same are hereinafter severally defined; but if the value thus determined proves to be manifestly unjust, either in excess of, or less than, the true market value of the property of said railway, then said council shall lower or raise the valuation as circumstances may justify. In the event that a railway company has neither stocks, bonds, nor securities that are currently listed for sale in the markets, nor net earnings, then the valuation of the property of said railway shall be determined by the council according to the best information that can be obtained as to its actual value.

"The present law governing the executive council and giving it full powers to take into consideration 'all matters' necessary to arrive at a valuation of the railroad property of the state, is as follows:

"Sec. 1336. Valuation. The said property shall be valued at its actual value, and the assessments shall be made upon the taxable value of the entire railway within the state, except as otherwise provided, and shall include the right of way, road bed, bridges, culverts, rolling stock, depots, station grounds, shops, buildings, gravel beds, and all other property, real and personal, exclusively used in the operation of such railway.

"In assessing said railway and its equipments, said council shall take into consideration the gross earnings per mile for the year ending January 1, preceding, and any and all other matters necessary to enable said council to make a just and equitable assessment of said railway property. If a part of the railway is without this state, then, in estimating the value of its rolling stock and movable property, they shall take into consideration the proportion which the business of that part of the railway lying within the state bears to the business of the railway without this state." — *The Iowa State Register*, March 1, 1890.

¹⁴⁷ *Des Moines Daily Leader*, No. 45, February 21, 1902.

¹⁴⁸ *Des Moines Daily Leader*, No. 45, February 21, 1902.

¹⁴⁹ *Senate Journal*, 1902, p. 435.

¹⁵⁰ *Des Moines Daily Leader*, No. 55, March 5, 1902.

¹⁵¹ *Senate Journal*, 1902, p. 545.

¹⁵² *Senate Journal*, 1902, p. 544.

¹⁵³ *Senate Journal*, 1902, p. 545.

¹⁵⁴ The opposition to the use of stocks and bonds in any form, not to speak of a rigid system of valuation, may be understood by examining the statements of Mr. Dudley of the Milwaukee, Mr. Wright of the Rock Island, and Mr. Baldwin of the Burlington.

Mr. Dudley said:

"The stock of a railway represents all the property of a railway as well as the railway itself. It might include large land grants locally taxed. If this method were adopted the west end of the Sabula bridge on the Milwaukee would be taxed nine times. Manipulation of stocks is a factor which may not be overlooked. The Northern Pacific stock, worth 150 at one hour in a day was worth 1,000 at another hour. The value of the property did not change an iota. The system includes the taxation of intangible values, such as good will. If the good will in ordinary business were taxed the system as to railways might be reasonable; but the constitution requires taxation of the property of corporations the same as that of individuals.

"The whole stock and bond theory of valuation is utterly fallacious.

"In the first place it transfers property from one state to another and subjects it to a double, and perhaps treble taxation. The stocks represent not only the value in the railroad proper, but all property owned by the company.

"Now suppose the stock and bond theory of valuing a railroad were actually used in this state, and in all the other seven states in which the Milwaukee system is operated, what would be the result? The west half of the Sabula bridge, for example, which is locally taxed under the law, would also be taxed by this council as an element in the valuation of the stocks; so that the property would be twice taxed in Iowa where it is located; but that is not all. The

value of that bridge would be transferred by this stock and bond theory into the seven other states, and the company would in fact be assessed no less than nine times upon the same property.

"But the transfer of property beyond state lines, and its multiple assessment resulting therefrom, is one of the least, though certainly not an unimportant consideration in the examination of the correctness of the stock and bond theory.

"The 'manipulation of the market' is a matter to which we cannot close our eyes. Two men enter into a wager that a certain stock will rise or fall, and forthwith each uses every endeavor to become the winner. . . .

"I have dealt thus at length with the stock and bond theory for the reason that it is the method of railway valuation which most commends itself to those who are more anxious to shift a still larger share of the tax burden upon the railroads than to scrutinize the justice of the measures which they advocate. It is the theory of the demagogue, not of the statesman, in dealing with an intricate problem." — *Iowa State Register*, Vol. XLVI, No. 346, February 26, 1902.

"Carroll Wright pleaded that the present executive council be given a chance to show what it could do. 'Why is there any necessity of legislation?' he said. 'The agitation is not directed to the bill or the law, but to the fact that the present law is not properly enforced and there is discrimination between roads.

"'I want the law left as it is. Let this executive council demonstrate whether there is any justice in the present agitation. Let them receive the credit or let them receive the damning if any comes from it.'

"Questioned by Larrabee, the speaker said his objection to the bill was that it exaggerated the stock and bonds feature and exercised a sort of moral coercion." — *Des Moines Daily Leader*, No. 73, March 26, 1902.

"When Mr. Baldwin assumed that the bill will establish the iron-clad stocks and bonds rule with an iron-clad mileage proportion division he got an argument from Representative Clark. Mr. Clark pointed out that neither rule is absolute, that these things are to be considered, not made an absolute rule. Mr. Baldwin replied that while not mandatory, these provisions would be likely to receive

too stiff a construction.”—*Des Moines Daily Leader*, No. 70, March 22, 1902.

¹⁵⁵ The speech of Senator Lewis in favor of the Junkin Bill and pointing out the weak points in our present system of railroad assessment was in part as follows:

“Our present law takes cognizance of three lines of facts as the measures of property values of Iowa railways, namely: physical values, gross and net earnings. That any one of these, or any combination of the same, under present conditions, is sufficient for the purpose of an intelligent assessment of railway properties is, to say the least, impossible and fraught with the greatest difficulty.

“Let us examine these sources of information one at a time, beginning with physical condition. Physical condition includes, as I said, an appraised inventory of the constituent elements of a railway. It leaves out entirely the franchise or intangible value. What is a franchise or tax upon intangible value? Our railway friends tell us that it is a tax upon good will and brains. I find from the report of the interstate commerce commission that some matters are considered as connected with the franchise value. They say the franchise includes the right, first, to be a corporation; second, to use public property and employ public authority for corporate ends. It includes the possession of traffic not exposed to competition, as, for example, local traffic. These possessions are given it through the right of eminent domain, through its corporate existence given it by the state. Third, it includes possession of traffic held by established connections, secured because the line in question is a link in a through route. Fourth, it includes the value, on account of the organization and vitality of the industries served, as well as the organization and vitality of the industry which renders the service. Courts in appointing receivers recognize the fact that railway corporations have values which must be taken care of, which must be conserved. They must be protected as a going concern, and hence they are put into the hands of a receiver, so that their values may not disintegrate, to be dissolved into other constituent elements.

“Railways have values outside of the bolts and ties and steel that is in them, that are used as a basis of credit for the issue of bonds and stocks in excess of the absolute cost of these physical materials.

If they have these values in excess of the cost of the value of these physical materials for the purpose of raising money on, why should we not take those values into consideration for the purpose of taxation? This physical property assessment has been abandoned in nine-tenths of the states of the union as an inadequate basis for taxation. As I said before, physical appraisement of the road ignores its value in the eyes of the commercial world, as determined by the value of the stocks and bonds in the markets of the world. It ignores the ability to pay as determined by the gross and net earnings. It ignores the cost of construction, which is not disregarded in taxing any other kind of property.

"I next pass to the consideration of gross earnings. A direct tax on gross earnings is not permitted by our constitution. It can only be levied as a franchise tax, or it would be considered an interference with interstate commerce and so decided by the supreme court of the United States in the case of *Fargo vs. Michigan*, 121 Report, page 230. Gross earnings give no definite idea as to the value of the property. What per cent of tax shall be levied as regards gross earnings? Any particular per cent would be purely arbitrary. It can be nothing more than a guess. Wisconsin guesses 4 per cent, and gets \$2,221,943 tax on 6,592 miles of railway. Minnesota guesses 3 per cent, and gets \$1,666,307 tax on 6,794 miles of road. Iowa figures out 2.65 per cent of tax to gross earnings, getting \$1,467,725 on 9,336 miles of road, and I desire to call your attention at this time to the fact that, nominally at least, the Iowa law is a gross earnings law. That is given prominence in the section which gives directions to the executive council how to assess Iowa railways." — *Des Moines Daily Leader*, No. 61, March 12, 1902.

¹⁵⁶ *Senate Journal*, 1902, p. 864.

¹⁵⁷ *Des Moines Daily Leader*, No. 61, March 12, 1902.

¹⁵⁸ *Senate Journal*, 1902, p. 864.

¹⁵⁹ In this connection an editorial appearing in the *Des Moines Daily Leader* and entitled *Defeat of The Assessment Bill* is of some interest:

"The house yesterday, by a vote of 61 to 30, voted to adopt the majority report for the indefinite postponement of the senate railroad assessment bill. For reasons heretofore explained in these

columns, this action was not unexpected. Since the beginning of the session it has been apparent that the house was under the control of the railroad interests. It has successively defeated the Hogue bill, compelling railroads to furnish cars equally to all shippers; the Hughes anti-pass bill and the Carter 2-cent fare bill, and has passed the Molsberry bill, beside other items of legislation asked by the railroad interest. So far as factional republican politics is concerned, both sides seem equally to blame for the defeat of the measure. Of the sixty-one votes against the bill, thirty-one were cast by members currently rated anti-Cummins, and twenty-eight were cast by members currently rated as pro-Cummins, and two by democrats. Of those voting for the minority report, and, therefore, for the bill, ten were anti-Cummins, ten pro-Cummins and ten democrats. In view of the fact that Messrs. English and Teachout, the Polk county members, voted against the bill, together with such well known Cummins men as Speaker Eaton and Messrs. Clarke, Barkley, Hilsinger, etc., it will be accepted throughout the state that one of the influences contributing to the defeat of the amendment of the railroad assessment law was the governor's office. It might have been impossible to have passed the bill through the house, constituted as it is, even if the governor had exerted his influence to the utmost, but it is plain that even if he were not actively against the bill, he was not actively for it. This, it is needless to say, will greatly disappoint many thousands who voted for his nomination for governor on the railroad assessment issue, and will put a great club in the hands of the governor's enemies.

"But even with the result as it is, the friends of reform in railroad assessment have little reason to feel discouraged. At the beginning of the session it looked as if no bill would be reported, much less passed. As it was, a bill was brought out and passed the senate by a large majority. The attention of the state has been attracted in a more concrete way than ever before. There has been debate which has been greatly instructive. It may confidently be predicted that, at the next session of the legislature, a better and stronger bill than the one now dead will be passed. The railroad interests would have been wise if they had accepted the mild bill of this winter, for in two years one will become law less to their liking. The education of the people of Iowa on the railroad assess-

ment question has only just begun.”— *Des Moines Daily Leader*, No. 76, March 29, 1902.

¹⁶⁰ This table is taken from a *Statistical Abstract of Iowa Railroads*, compiled by A. H. Davidson, Secretary of the Executive Council, 1907, pp. 20, 21, 27, 28, 33, 34.

¹⁶¹ *Statistical Abstract of Iowa Railroads*, 1907, p. 55.

CHAPTER XXI

¹⁶² 12 Iowa 112.

¹⁶³ In regard to the right of a city to levy special taxes for build-side-walks, the court held that “It is made so for the purpose of giving to the city a speedy and summary remedy for the collection of the costs of such walks, from the property of those supposed to be benefited thereby. When such authority is conferred by the Legislature we see no good reason why the city should not enforce the collection of such taxes.”— *The Burlington & Missouri River Railroad Co. vs. Spearman and the City of Mt. Pleasant*, 12 Iowa 118, 119.

¹⁶⁴ *Laws of Iowa*, 1862, p. 227.

¹⁶⁵ 16 Iowa 348.

¹⁶⁶ *The City of Davenport vs. the Mississippi and Missouri Railroad Co.*, 16 Iowa 353.

In this same case the judge explains in much detail his views on the proper method of valuing railroad property. The striking similarity between his views and those of certain members of the Thirteenth and Fourteenth General Assemblies will be observed. The judge thus continues:

“The facts agreed on in this case are, that the rolling stock of the company is in a constant state of transition, having no local existence in one place more than in another; that it is employed to operate the whole length of the road 170 miles long, only two miles of which are within the limits of Davenport, so that, as a matter of fact, it is for the very large proportion of the time elsewhere than in the city of Davenport. It is therefore difficult to see in what sense it is to be considered, as having its local existence on the two miles in Davenport to the exclusion of the 168 miles outside of that

city. For these reasons, without stating others in effect, the Court below said this rolling stock could not be taxed for city purposes. But that these reasons did not apply to the road bed and depot grounds and buildings which had a permanent place in the city, and therefore were taxable.

"We now propose to show that neither description of property, as such, is subject to taxation in the manner proposed for other and different reasons. We premise, first, that this railroad enterprise, in all its appointments and accessories, as a great public improvement, is an entirety, that the two miles of road-bed in Davenport is only one link of a long line stretching through several counties, indispensable to the whole; that the depot grounds in Davenport are only one of a series of stations along the railway, each alike essential to the enterprise; that the machine shops in the same place are as necessary for the successful operation of the road at Washington and Grinnell as in their own vicinity, and give value and efficiency to every part of the road. These facts, coupled with the shifting, transitory nature of the rolling stock, of which we have already spoken, show the impracticability of dividing up this peculiar kind of property into posts or stations, for the purpose of local taxation as by towns and counties so as to give to each municipality its due proportion of the revenue, and at the same time be just towards the corporation." — 16 Iowa 354, 355.

The writer has no knowledge of a stronger defense of the strict "unit rule" of railroad valuation than the one above.

¹⁶⁷ 16 Iowa 359.

¹⁶⁸ 17 Iowa 120.

¹⁶⁹ 32 Iowa 427.

¹⁷⁰ 32 Iowa 429-431.

¹⁷¹ Judge Cole writes a dissenting opinion which is in part as follows:

"The act was not for the purpose, nor is it so entitled, to raise revenue for State and county purposes; but it was a tax in lieu of all taxes for any and all purposes. The bare fact that the tax, when collected and paid into the State treasury, is apportioned one-half to the counties where the roads are situated, does not in my opinion

authorize any such change of the language of the statute as is made by the foregoing opinion." — 32 Iowa 432.

¹⁷² 38 Iowa 633.

¹⁷³ 47 Iowa 196.

¹⁷⁴ *Constitution of Iowa*, 1857, Article VIII, Section 2.

¹⁷⁵ 32 Iowa 427.

¹⁷⁶ *Tappan vs. Merchant's National Bank*, 19 Wallace 490.

¹⁷⁷ *Faxton vs. McCash*, 12 Iowa 527. *The Dubuque and Sioux City Railroad Company vs. The City of Dubuque*, 17 Iowa 120.

¹⁷⁸ Judge Rothrock wrote the majority opinion which was in part as follows:

"The objection made to the act in question is not that by its provisions any portion of the property escapes taxation of any kind. The act itself requires that the assessment shall be made at a cash value, and when thus made it is liable to the same tax as the property of individuals. For example, the city of Dubuque may levy municipal taxes to the same extent, on the amount apportioned to it, as it may upon the property of individuals. That it is within the power of the legislature to fix the *situs* of property for the purposes of taxation, we have no doubt. The question then remains, must all property be assessed and valued by the same officers, or is it required by the provision of the constitution in question that all property must be taxed by the same method? In our opinion the true meaning and intent of the constitutional provision in question is that all property, whether owned by corporations or individuals, shall be equally burdened with taxation, and that the legislature may adopt different methods of ascertaining values, adapted to the various peculiarities of the property. This has always been recognized as proper. And the power of the legislature to fix the *situs* of property for the purpose of taxation is not confined to personal property alone; it exists as to real property also. . . . These difficulties attending a system of taxation adapted to this class of property will readily be understood by any one. The road, with its right of way, embankments, excavations, iron rails, switches, depots, engine houses, machine shops, etc., is, in a certain sense, an entirety, extending from one terminus

to the other. Its value largely depends upon its length of line, the country through which it is located, its proximity to other roads, and the business transacted by it. The extent of the line situated in any one city or town, township, or other taxing district, whatever improvements it may have therein in the way of machine shops and depots, is valuable chiefly by reason of its connection with the whole line. The value in each taxing district, without reference to the whole line, would be little more than the value of the iron rails, for the purposes of removal, and the value of the land used for machine shops, engine houses and other buildings. Under these circumstances it will be readily seen that, under our general revenue law, to impose upon local assessors throughout the length of our long lines of road, extending in some instances across the State, a distance of three hundred and fifty miles, exclusive of branches, the duty of ascertaining the value of the road in each assessment district, would be productive of anything but uniform results. . . . Whether the defendants would be liable to a greater aggregate taxation by pursuing the ordinary mode of valuation it is impossible, with the record before us, to determine. Under this system it is liable to the school districts, road districts, townships, counties, incorporated towns and cities, in proportion to the length of line in such taxing districts, for whatever taxes they may lawfully levy. Whether, by reducing the valuation in Dubuque and increasing it correspondingly in Clinton, McGregor, Lansing, and other cities and towns, school and road districts, the aggregate taxation would be increased or diminished, does not appear. If the aggregate be equal there is an equality of burden, whether the taxes be paid in Dubuque, Clinton, McGregor, or other taxing districts."— *The City of Dubuque vs. The C. D. & M. R. Co., and The C. C. & D. R. Co.*, 47 Iowa 200-203.

The minority opinion very ably presented by Judge Beck is of great interest at the present time; for, had his views prevailed, cities would now have the right to tax railroad terminals. The judge said:

"The provisions of the statute which are brought in question in this case are, perhaps, stated in the foregoing opinion with sufficient fullness. Its effect is this: The property, real and personal, of railroad corporations situated and found in the cities of this State,

and used in the operation of railroads, is not subject to municipal taxation, to the extent of its assessed value, as the property of individual tax-payers of the cities. All property of the corporations not a part of the railroads, but used in their operation, is valued and the amount added to the value of the road; the gross sum thus obtained is divided by the number corresponding with the length of the road in miles, and the value of the railroad per mile is thus found. Each county, taxing district and city is authorized to levy and collect taxes upon the road within its limits, according to the valuation per mile found as just explained. Taxes in no other manner and to no greater extent can be assessed against the corporation upon such property. Personal and real property situated in the cities and used in connection with the railroads is exempt from taxation, or, rather, is taxed through the assessment of the railroad.

"A railroad terminating in or passing through a city may own therein large tracts of land whereon are erected valuable buildings containing machinery, stores, etc., all reaching the value of hundreds of thousands of dollars; but two or three miles of the road may be within the city. In such a case the municipal taxation would be upon the road within the city limits valued at, say, \$20,000, while the value of the property in the city owned by the corporation would reach, say, \$500,000, if assessed for taxation as the property of individuals. The city could assess the road for taxation at \$20,000. The half million of property which would be taxable at that value, if owned by individuals, in the hands of the corporation is exempt from taxation except for the small amount which enters into the valuation of the railroad. This is a correct statement of the practical effect of the statute. . . .

"That part of the opinion which holds the legislature may, in providing for taxation, 'adopt different methods of ascertaining values adapted to the various peculiarities of the property', and may fix the *situs* of property, both real and personal, for the purpose of taxation, announces an undisputed rule. But this may not be done for the purpose of creating inequality of taxation. It may be done to promote equality, not to effect inequality. The statute involved in this case, in providing for the taxation of railroad property, requires the assessment of lands, houses and per-

sonal property, situated in the city of Dubuque, to be made by the state officers, and the values thereof to be added to the value of the railroad, the aggregate to be regarded as the value of the road; the city is permitted to tax the road in its limits upon its value per mile, ascertained from its total value, fixed as aforesaid, and is forbidden to tax the real and personal property of the corporation in the city, disconnected from the railroad. It is apparent that this is an ingenious method adopted to relieve the corporation of municipal taxation, from which individuals owning property in the city are not exempt.

“But it is said that property of the corporation situated in the city; while not subject to municipal taxation, may be taxed by the counties, school districts, etc., to an amount which it would bear, were it taxable in the city. For the present we will concede the correctness of the fact assumed. But it does not establish that the corporation property is subject to taxation as the property of individuals, according to the mandatory provision of the constitution. If all owners of property situated in the city of Dubuque are subject to municipal taxes in that city, the law, which provides that the railroad property, situated in the same city, shall be taxed in other counties, surely prescribes for taxation of such property differently from the property of individuals. The objection is not to the manner of taxation, but to the taxation itself. The manner of assessing the valuation of the property may not be objectionable. Unequal taxation is forbidden by the constitution. It will not be valid because the manner of its enforcement is not unlawful.

“But the position of fact upon which the argument we are now attempting to answer is based, cannot be admitted. The railroad corporations do escape from the payment of large amounts of taxes upon their city property, which, if the property were owned by natural persons, would be imposed thereon. Can it be supposed that the law would be upon our statute book if it had not been intended to have that effect? Its history is known to the world, and all men know that the object of its enactment was to lighten the burdens of taxation to be borne by the favored corporations. It is just as plain that in its practical workings it has the effect intended in its enactment. The defendants, the railroad companies, pay county and school taxes in Clayton county under the law. If assessed

as the property of individuals in Dubuque, they would pay county and school taxes there. Under the laws they do not pay any kind of taxes that would not be paid if taxed in Dubuque, equally with natural persons. In addition to their taxes they now pay, if taxed in Dubuque, municipal taxes would be a burden on their property; these they almost wholly escape so far as property connected with the road is concerned." — 47 Iowa 204-211.

¹⁷⁹ 47 Iowa 209.

¹⁸⁰ *Laws of Iowa* (Public), 1872, p. 31

¹⁸¹ 38 Iowa 633.

¹⁸² 38 Iowa 634-645.

¹⁸³ 67 Iowa 201. See also Cooley's *Taxation*, p. 273.

¹⁸⁴ *Code of Iowa*, 1897, p. 471.

¹⁸⁵ 19 Federal Reporter 177. In *The C. M. & St. P. R. R. Co. vs. Sabula*, the Court said in part:

"But by section 10 of the act, one kind of property used in the operation of railways is specially excepted, to-wit, all railway bridges across the Mississippi and Missouri rivers, it being declared that 'such bridges shall be assessed and taxed on the same basis as the property of individuals.' Under this section the census board have no right or authority to assess any railroad bridges spanning the rivers named, because the first clause of the section expressly declares that no provision of the act shall be held applicable to such bridges, and it is only by virtue of the provisions of this act that the census board have the right to assess any railroad property for taxation. The first clause, therefore, of section 10 negatives the claim that railroad bridges over the Mississippi and Missouri rivers are assessable by the census board, and the latter clause of the section expressly declares that these bridges shall be assessed and taxed on the same basis as the property of individuals, by which is meant that these bridges shall be assessed in the same mode as is pursued in regard to other property situated in the same taxing district, or, in other words, these bridges are to be assessed and taxed through the agency of the local assessors." — 19 Federal Reporter, 181, 182.

CHAPTER XXII

¹⁸⁶ *Code of Iowa*, 1851, p. 78.

¹⁸⁷ *Laws of Iowa*, 1858, p. 309.

¹⁸⁸ *Laws of Iowa*, 1856, p. 279.

¹⁸⁹ *Laws of Iowa*, 1858, p. 309.

¹⁹⁰ *Laws of Iowa*, 1862, p. 227.

¹⁹¹ See above pp. 31-33.

¹⁹² *Laws of Iowa*, 1870, p. 110.

¹⁹³ *The City of Davenport vs. The Mississippi and Missouri Railroad Co.*, 16 Iowa 348.

¹⁹⁴ *Dunleith and Dubuque Bridge Co. vs. the City of Dubuque*, 32 Iowa 427.

¹⁹⁵ *Thirty-sixth Annual Report of the Assessed Valuation of Railroad Property*, 1907, pp. 26-35.

¹⁹⁶ Compiled from *Thirty-Sixth Annual Report of the Assessed Valuation of Railroad Property*, 1907, pp. 26-37; *Report of Treasurer of State*, 1906, pp. 5-39; and County Treasurers' reports, 1906.

¹⁹⁷ These facts have been obtained from the tax commission reports of the States specified.

¹⁹⁸ *Laws of Iowa*, 1907, p. 200.

¹⁹⁹ *Nineteenth Annual Report of the Interstate Commerce Commission, Statistics of Railways*, 1906, pp. 105, 106.

²⁰⁰ That such a law is by no means impossible, is clear from the latest tax commission reports of the following States: New York, Pennsylvania, New Jersey, Massachusetts, and Wisconsin. In this same connection the commission reports of California for 1906 and Minnesota for 1907 are especially instructive.

²⁰¹ *Fifth Annual Financial Report of Audubon County*, 1906, p. 41.

²⁰² Compiled from *Fifth Annual Financial Report of Audubon County*, 1906, pp. 41, 49.

²⁰³ *Financial Report of Fayette County*, 1906, pp. 90-95.

Column four entitled "Tax paid to the State under the General Property Tax" was obtained by merely taking the State millage on the total tax valuation given in column three.

²⁰⁴ *Report of Board of Supervisors of Pottawattamie County, 1907.*

²⁰⁵ *Financial Report of Union County, 1906, pp. 60, 61.*

²⁰⁶ Report of City Treasurer, F. T. True, in *Municipal Reports of Council Bluffs, 1907, p. 41.*

²⁰⁷ *Laws of Nebraska, 1907, pp. 361, 362.*

²⁰⁸ Personal letter received by the writer from the Auditor of South Dakota.

²⁰⁹ *Midland Municipalities, February, 1908, pp. 169-173, 174-178.*

²¹⁰ *Senate Journal, 1909, pp. 269, 270.*

²¹¹ *Senate Journal, 1909, p. 1161.*

²¹² The following is in part the statement of the Board of Railroad Commissioners:

"Each township or city is entitled to a proportion of the value of the entire property that the length of the main line of road in such township or city bears to the entire length of road. A city containing miles of sidings, with depots, shops, round houses and where engines are stationed gets no more of value for taxation than the same length of main line of road in any township or school district. The theory of the law seems to have based the taxation largely upon the gross earnings of the roads. An embankment or a cut that may have cost one hundred thousand dollars per mile is to be assessed no higher than a mile on which the grading cost two thousand dollars, as this mile of road for earning purposes is no more valuable than the other.

"If we understand the intent of the law, it was that the Executive Council should determine the value of the lands owned and buildings used for railroad purposes, the value of the superstructure and rolling stock, and add to this a value determined by the earning capacity of the lines of road. Whether a road was very expensive or cheap to build, the amount of labor and money expended to make it fit for service was not by the law regarded as an element in its value for taxation.

"It has been frequently urged that this law is unfair in its operation on municipalities. The city of Burlington, with the extensive repair shops, depots, side tracks, etc., located in that city, gets no more of value for taxing purposes than any other township in the county with an equal length of main track; in fact the double track is proportioned across the entire State. It may be a difficult matter for the Executive Council to determine exactly the correct amount at which these roads should be valued, but if the amount is the same as any other property earning the same amount in excess of the value of the realty, it is fair to assume that the law is fully complied with, and that the property bears its share of the burdens of taxation, unless it be in the municipalities above referred to.

"The early roads in Iowa were built at a very large cost. Bonds were sold at great discount, interest accumulated for years unpaid, and the element of cost as reported to the Board we have never regarded as a correct criterion of value. In our judgment a percentage of the gross earnings would be the simplest and fairest method of reaching railroad taxation in the State.

"The values of railway stocks in the market are determined by their earnings, and fluctuate with the abundance or scarcity of the crops that are produced along their lines. Competitive roads may also diminish business. The law which makes the gross earnings an element in determining values is, we think, based upon the correct theory. We learn from a source that we regard as entirely reliable that the reason the tax law was passed in its present form, was the determined efforts of some of the cities on the Mississippi river to have taxed within their respective limits all the rolling stock and other property of the roads, leaving for taxation outside these cities merely the road bed and the superstructure. This was thought unfair to the rural districts, and the reaction induced the passage of the present law."— *Ninth Annual Report of the Board of Railroad Commissioners*, 1886, pp. 14-16.

The reader is of course aware that what the Commission says in regard to the tax on rolling stock and the attitude of the rural districts is only partially correct. Only a few extremists had any definite program for taxing rolling stock in the cities. In addition, other considerations not mentioned above had the greatest influence over the rural members.

²¹³ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. IV, pp. 363, 364.

CHAPTER XXIII

²¹⁴ The writer does not claim that there are fifty distinct systems of railway taxation. As a matter of fact there are only a few systems that differ in essentials. The methods employed in the various States and Territories, however, differ in more or less important details.

²¹⁵ In both Iowa and Wisconsin the assessment is made by some form of a State Board. In Wisconsin both the assessment and taxation are in the hands of the State Tax Commission, while in Iowa the assessment is in the hands of the Executive Council and the taxation is left to the local units through which the roads pass.

²¹⁶ *Nineteenth Annual Report of the Interstate Commerce Commission, Statistics of Railways*, 1906, pp. 106, 107.

²¹⁷ *Report of Ontario Commission on Railway Taxation*, 1905, p. 160.

²¹⁸ *Report of California Tax Commission*, 1906, p. 112.

²¹⁹ Rhode Island has always been slow to abolish old systems. This was true in the case of her Colonial Charter which remained the form of State government well on into the nineteenth century. The small area of the State makes the retention of the general property tax with local assessment less difficult than in a larger commonwealth.

²²⁰ *Report of California Tax Commission*, 1906, p. 129.

²²¹ *Report of Ontario Commission on Railway Taxation*, 1905, pp. 147, 148.

The system of exempting non-resident bond holders works great injustice in Pennsylvania. Manifestly no definite relation exists between the amount of foreign bonds and the total value of any particular railroad. Some roads pay practically no taxes on capital stock or bonds as their capital stock is almost worthless and their bonds are held by non-residents.

²²² *Report of Minnesota Tax Commission*, 1907, p. 11.

²²³ *Report of Ontario Commission on Railway Taxation*, 1905, p. 105.

²²⁴ *Report of Ontario Commission on Railway Taxation*, 1905, p. 103.

²²⁵ *Report of Ontario Commission on Railway Taxation*, 1905, p. 107.

²²⁶ *Report of California Tax Commission*, 1906, pp. 171, 172.

²²⁷ *Compendium and Brief History of Taxation in Pennsylvania*, 1906, p. 116.

²²⁸ The writer was a resident of Wisconsin at the time the gross receipts system was abolished and the ad valorem tax law was enacted. The new law was passed only after a desperate struggle with the railroads. The primary consideration was that of revenue. It was quite generally felt that railroad corporations were not paying their rightful share of the tax burden. It was argued with much force that they should be required to pay on the full value of their property. The enormous increase of taxes received from the railroads has certainly justified the expectations of those who framed the law. The State Tax Commission has the following to say regarding the change of system:

"The legislature of 1903 took up the question of changing the method of taxing railroads from the license fee system to the ad valorem plan. The imposition of a percentage of gross earnings in lieu of taxes but at different rates had prevailed in the state for fifty years. The objection to the license fee on gross earnings had been growing stronger in recent years until a crisis was reached on the question and it became necessary to give serious attention to the proposition to substitute the *ad valorem* method as more likely to produce justice and equality between the burden borne by railway property and other property.

"Early in the session bills were introduced in the senate and assembly providing that the railways should be valued by a state board and taxed at the average rate of taxation.

"In preparing the bill for the ad valorem taxation of railway property many questions of the utmost importance arose, involving constitutional law, the finances of the state and the principles

of equity which lie at the foundation of all just systems of taxation.

"The interest of the public depending upon the wise selection of a legal method to take the place of a license tax on gross earnings was so great that if the method adopted should fail and be declared unconstitutional, nearly one-half of the revenue of the state would be cut off, at least temporarily, the sources of state and local revenue thrown into confusion and the whole system of taxation in the state disjointed and demoralized. The consequences of a mistake would be tremendous and the attempt for tax reform receive a blow which would retard progress toward better conditions for years to come.

"To avoid the results of a mistake, if any should be made, there were added to the ad valorem part of the law, provisions for a continuance of the license fees on gross earnings within certain well defined limits until 1905 so that in case the ad valorem provisions were assailed in the courts, sufficient time would elapse for a judicial determination of the validity of these provisions and in the meantime the license fees on gross earnings would be paid into the state treasury. This course was a wise precaution for it gave to the state a large part of its revenue during the period of the litigation which followed. The provision for payment of the license fee was again extended to 1909 by chapter 216, laws of 1905.

"The committees on the assessment and collection of taxes of the two houses of the legislature gave hearings to all parties interested in the measure then pending, including the presidents and other chief officers of the railway companies and systematic and exhaustive consideration was given to every material point in the proposed bill before it should be recommended for enactment into law.

"No measure before the legislature for many years received more thoughtful and scientific study and it was only after months of careful deliberation and thorough analysis of every section by the able and competent legislators constituting the committees just referred to that the pending bills were consolidated and enacted into the form of law as chapter 315 of the laws of 1903.

"The passage of this law is a great epoch in the history of taxation in Wisconsin and should exercise a decided influence in shaping future events in tax reforms.

"However complete a law may be framed for the taxation of

railways it is essential that the law shall be administered with full knowledge of all the facts and in an intelligent and efficient manner to carry it into effect according to its true spirit and to accomplish the purpose for which it was enacted." — *Report of Wisconsin Tax Commission*, 1907, pp. 84, 85.

²²⁹ *Report of California Tax Commission*, 1906, p. 154.

²³⁰ *Report of Ontario Commission on Railway Taxation*, 1905, p. 53.

²³¹ *Report of Ontario Commission on Railway Taxation*, 1905, p. 80.

²³² An Act to Provide for the Taxation of Railroad Companies — *Laws of Wisconsin*, 1903, pp. 493-495.

²³³ An Act to Provide for the Taxation of Railroad Companies — *Laws of Wisconsin*, 1903, p. 499.

²³⁴ *Report of Minnesota Tax Commission*, 1907, p. 53

²³⁵ *Report of Minnesota Tax Commission*, 1908, pp. 47-60

²³⁶ *Report of Minnesota Tax Commission*, 1908, p. 58.

²³⁷ *Report of Minnesota Tax Commission*, 1908, pp. 86-92.

²³⁸ *Report of Ontario Commission on Railway Taxation*, 1905, p. 197.

²³⁹ The stock and bond method of Connecticut is mentioned for the reason that in Pennsylvania foreign bonds are exempt under a court decision while in Massachusetts stock alone is taxed. It is the opinion of the writer that during the agitation in 1902 for a change of system, too much importance was attached to the stock and bond method.

The tax commissions of Ontario, California and Wisconsin have all presented strong arguments against the stock and bond method.

²⁴⁰ *Report of Ontario Commission on Railway Taxation*, 1905, p. 16.

²⁴¹ *Adams's Finance*, p. 501.

²⁴² *Report of California Tax Commission*, 1906, pp. 77-81.

²⁴³ *Statutes and Amendments to the Code (California)*, 1907, p. 1353.

²⁴⁴ *Laws of Missouri*, 1908, p. 460.

²⁴⁵ *Nineteenth Annual Report of The Interstate Commerce Commission, Statistics of Railways*, 1906, pp. 105, 106.

²⁴⁶ The statistics for 1908, not available at the time the text of this chapter was written, are as follows in Iowa and neighboring States: Kansas, \$343; Nebraska, \$309; Minnesota, \$388; Wisconsin, \$409; Michigan, \$396; Illinois, \$441; and Iowa, \$230.

²⁴⁷ *Report of Railroad and Warehouse Commission of Minnesota*, 1906, pp. 5, 6. See also *Report of Minnesota Tax Commission*, 1907, p. 11.

CHAPTER XXIV

²⁴⁸ See Preface to Part I.

²⁴⁹ *Laws of Iowa*, 1839-1840, p. 66.

²⁵⁰ *Laws of Iowa*, 1843-1844, pp. 32, 33.

²⁵¹ *Laws of Iowa*, 1846-1847, pp. 136-140.

²⁵² *Code of Iowa*, 1851, p. 83.

²⁵³ *Laws of Iowa*, 1852-1853, p. 123.

²⁵⁴ *Laws of Iowa*, 1856-1857, p. 193.

²⁵⁵ See Vol. I, Chapters IV and V.

²⁵⁶ *Laws of Iowa*, 1862, p. 224.

²⁵⁷ *Laws of Iowa*, 1868, pp. 176-181.

²⁵⁸ *Laws of Iowa*, 1870, pp. 186, 187.

²⁵⁹ *Laws of Iowa*, 1870, p. 94.

²⁶⁰ *Code of Iowa*, 1873, p. 145.

²⁶¹ We refer to the meaningless task of increasing or decreasing aggregate valuation, a subject which will be carefully discussed in the following chapter.

²⁶² Slight modifications of the system outlined in the text, especially with reference to inheritance taxation, have already been noted and will be restated later. The acknowledged failure of local

assessment for certain classes of intangible property led to the creation of the tax ferret system.

²⁶³ *Laws of Iowa*, 1839-1840, p. 64.

²⁶⁴ *Laws of Iowa*, 1840-1841, p. 67.

²⁶⁵ *Laws of Iowa*, 1845-1846, pp. 5, 6.

²⁶⁶ *Code of Iowa*, 1851, pp. 78-80.

²⁶⁷ *Revision of 1860*, p. 111.

²⁶⁸ See Part III; also Vol. I, Pt. II.

²⁶⁹ From the standpoint of constructive reform an effort will be made to answer this question in the following chapter.

²⁷⁰ See Vol. I, Ch. IV.

²⁷¹ The fact that for more than seventy years our people have clung tenaciously to the ad valorem system in spite of administrative failure should not be forgotten when we come to approach any question of reform.

²⁷² *Revised Statutes*, 1842-1843, p. 546.

²⁷³ *Laws of Iowa*, 1858, p. 309.

²⁷⁴ *Revision of 1860*, p. 111; *Code of Iowa*, 1873, p. 136.

²⁷⁵ *Bridgman vs. Keokuk*, 72 Iowa 42.

²⁷⁶ *Code of Iowa*, 1897, p. 464.

²⁷⁷ See Vol. I, Chapter VI.

²⁷⁸ *Revised Statutes*, 1842-1843, p. 546.

²⁷⁹ *Laws of Iowa*, 1846-1847, p. 137.

²⁸⁰ *Code of Iowa*, 1851, p. 76.

²⁸¹ *Code of Iowa*, 1897, p. 465.

²⁸² *The City of Dubuque vs. The C. D. & M. R. Co., and the C. D. R. Co.*, 47 Iowa, 196.

²⁸³ *Noble's Taxation in Iowa*, p. 83.

²⁸⁴ *Laws of Iowa*, 1870, p. 103.

²⁸⁵ *Laws of Iowa*, 1896, p. 40.

²⁸⁶ It should be remembered that this act is similar to the present revenue laws of Wisconsin with reference to certain public service corporations; and had it not been for certain Supreme Court decisions, the same system might have been made the basis of much needed reforms in Iowa.— See Vol. I, p. 202.

²⁸⁷ In this connection the reader should bear in mind the amount of property, exempt under the laws of Iowa—crops, live stock, machinery, household furniture, etc.—on a farm worth twenty-five thousand dollars.

²⁸⁸ An example of this kind recently happened in the case of the Marshalltown Gas Company.

CHAPTER XXV

²⁸⁹ The International Tax Association held its first meeting at Columbus, Ohio, in 1907. At that time it was national in scope but was made international at the second Conference held at Toronto, Canada, in 1908. The third meeting was held at Louisville, Kentucky, in 1909; and the one for the present year was held at Milwaukee, Wisconsin, August 30-31 and September 1-2.

²⁹⁰ The attention of the general reader is called to Appendix B, wherein a fairly complete resumé of the leading facts bearing upon the tax commission movement is presented.

²⁹¹ If Iowa is to create a temporary commission to investigate and report, an examination of the California law found in Appendix B would be worth while.

²⁹² *Laws Relating to Assessment and Taxation in Kansas*, 1910, p. 2023.

²⁹³ The following States have some form of county assessment: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, Oregon, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming. For further information relating to county assessment, see Appendix C.— See *Report of Minnesota Tax Commission*, 1908, pp. 25, 26.

²⁹⁴ The following language of the Wisconsin Commission is significant: "The town meeting and local self-government have been hallowed by age until it may seem sacrilegious to question the wisdom of the one or the perfection of the other. The commission does not advocate their abolition, or any change in them except in so far as experience has forced upon its members the conviction that there can be no material reform in our taxation methods until the election of assessors by the locality is abandoned."— *Report of Wisconsin Tax Commission*, 1909, p. 15.

²⁹⁵ *Report of Minnesota Tax Commission*, 1908, pp. 26, 27.

²⁹⁶ The following statistics of under assessment and inequalities as between counties for all the States is interesting and instructive:

"1. In Alabama the average assessment of real estate for the State is about 45 per cent, the counties range from 37 to 60 per cent.

"2. In Arizona the average is 34, the counties range from 17 to 50.

"3. In Arkansas the average is 40, the counties range from 20 to 90.

"4. In California the average is 50, the counties range from 26 to 73.

"5. In Colorado the average is 40, the counties range from 21 to 67.

"6. In Connecticut the average is 80, the counties range from 64 to 87.

"7. In Delaware the average is 57, the three counties are respectively 52, 55, 68.

"8. In Florida the average is 35, the counties range from 29 to 49.

"9. In Georgia the average is 52, the counties range from 37 to 58.

"10. In Idaho the average is 42, the counties range from 30 to 60.

"11. In Illinois the average is 15, in the counties the average is about maintained.

"12. In Indiana the average is 60, the counties range from 40 to 80.

"13. In Iowa the average is 20, the counties range from 18 to 25.

"14. In Kansas the average is 23, the counties range from 17 to 42.

"15. In Kentucky the average is 62, the counties range from 41 to 76.

"16. In Louisiana the average is 50, the counties range from 25 to 78.

"17. In Maine the average is 75, the counties range from 66 to 80.

"18. In Maryland the average is 65, the counties range from 46 to 70.

"19. In Massachusetts the average is 90, the counties range from 75 to 100 in Suffolk.

"20. In Michigan the average is 62, the counties range from 45 to 75.

"21. In Minnesota the average is 38, the counties range from 22 to 55.

"22. In Mississippi the average is 53, the counties range from 34 to 80.

"23. In Missouri the average is 41, the counties range from 25 to 59.

"24. In Montana the average is 44, the counties range from 21 to 50.

"25. In Nebraska the average is 16, the counties range from 12 to 30.

"26. In New Hampshire the average is 66, the counties range from 55 to 70.

"27. In New York the average is 90, the counties range from 54 to 98 in New York City.

"28. In North Carolina the average is 60, the counties range from 20 to 85.

"29. In North Dakota the average is 30, the counties range from 20 to 35.

"30. In Ohio the average is 46, the counties range from 27 to 70.

"31. In Oregon the average is 30, the counties range from 20 to 40.

"32. In Pennsylvania the average is 58, the counties range from 20 to 77.

"33. In Rhode Island the average is 75, the counties show very little variation.

"34. In South Carolina the average is 47, the counties range from 30 to 67.

"35. In South Dakota the average is 46, the counties range from 36 to 67.

"36. In Tennessee the average is 69, the counties range from 32 to 88.

"37. In Texas the average is 49, the counties range from 23 to 74.

"38. In Utah the average is 44, the counties range from 25 to 50.

"39. In Vermont the average is 77, the counties range from 50 to 80.

"40. In Virginia the average is 55, the counties range from 22 to 80.

"41. In Washington the average is 46, the counties range from 22 to 50.

"42. In West Virginia the average is 50, the counties range from 30 to 70.

"43. In Wisconsin the average is 76, the counties range from 54 to 96.

"44. In Wyoming the average is 32, the counties range from 29 to 50."—*Proceedings of the First National Conference on State and Local Taxation*, 1907, pp. 118-120.

²⁹⁷ *Report of Wisconsin Tax Commission*, 1898, p. 71.

²⁹⁸ *Report of Wisconsin Tax Commission*, 1898, pp. 71, 72.

²⁹⁹ The language of the Commission relative thereto was in part as follows:

"A great and growing evil in our state is the prevailing custom of assessing property at a sum far below its true value. This is an evil first, because it leads the assessors to disregard their oaths and the requirements of the statutes. Section 1052 of the Revised Statutes provides that real property shall be assessed 'at the full value which could ordinarily be obtained therefor at private sale,' and every assessor is required to take an oath to the effect 'that each and every valuation of the property made by me is the just and equitable value thereof as I verily believe.' "

³⁰⁰ *Report of Wisconsin Tax Commission*, 1898, p. 78.

³⁰¹ *Report of Wisconsin Tax Commission*, 1901, p. 11.

³⁰² *Report of Wisconsin Tax Commission*, 1901, p. 51.

³⁰³ *Report of Wisconsin Tax Commission*, 1901, pp. 151, 152.

³⁰⁴ *Report of Wisconsin Tax Commission*, 1903, p. 8.

³⁰⁵ *Report of Wisconsin Tax Commission*, 1907, p. 20.

³⁰⁶ *Report of Wisconsin Tax Commission*, 1907, pp. 168-170.

³⁰⁷ *Report of Wisconsin Tax Commission*, 1909, p. 10.

³⁰⁸ *Report of Wisconsin Tax Commission*, 1909, pp. 14, 15.

³⁰⁹ *Proceedings of the First National Conference on State and Local Taxation*, 1907, p. 102.

³¹⁰ This information is needed in order to administer the law relative to the taxation of railroads and similar public service corporations.

³¹¹ *Report of Wisconsin Tax Commission*, 1907, p. 19.

³¹² *Report of Minnesota Tax Commission*, 1907, p. 27.

³¹³ *Report of Minnesota Tax Commission*, 1908, pp. 50, 51.

³¹⁴ *Report of Minnesota Tax Commission*, 1908, pp. 7, 8; 21-23.

³¹⁵ *Final Report of West Virginia Tax Commission*, 1902, p. 5.

³¹⁶ *Final Report of West Virginia Tax Commission*, 1902, p. 49.

³¹⁷ The following statement is to the point:

"I am trying to impress the fact that the enactment of laws will not settle the question of uniformity and equality in taxation. No law, and especially a tax law, will act automatically. We do not need more law on the tax question as much as we need the present laws effectively enforced. The machinery for their enforcement needs repairing. The question, then, which presents itself is: Can the State Tax Commissioner enforce the laws relating to the assessment of property, and see that all property is assessed as the law directs, at its true and actual value, with the power given him under the above statute?

"If an assessing officer refuses to assess property at its value

there is no other power in the State whereby such property can be assessed. His power is supreme, and there is no supervisory power over him. Should not the Tax Commissioner or a tax commission, or some other body, be vested with supervisory or corrective power?"—*Report of West Virginia Tax Commission, 1905-1906*, p. 9.

³¹⁸ *Report of West Virginia Tax Commission, 1905-1906*, pp. 9, 10.

³¹⁹ *Report of West Virginia Tax Commission, 1905-1906*, pp. 28, 32.

³²⁰ "Perhaps the most conspicuous feature of the reports of the special commissions was the unanimity with which they denounced the local assessor, the general property tax and the absence of centralized control of the administration of the revenue system. They pointed out with much force that this most vital function of government, the raising of the revenue with which to run it, was broken up and scattered among innumerable local authorities, each of whom was a law unto himself and with no compelling sense of accountability to a definite superior to hold him to a scrupulous performance of his duties. With the hope of obtaining relief from the last named complaint as well as from other disorders complained of, many commissions recommended the creation of a permanent state tax office in charge of a commission of from three to five members or of a single commissioner."—*North Dakota Public Library Commission, Legislative Reference Department, Bulletin No. 1, 1910*, pp. 9, 10.

³²¹ The following table shows the increase of the tax burden 1880-1907:

YEAR	POPULATION	TOTAL TAX FOR ALL PURPOSES	AMOUNT OF TAX PER CAPITA
1880.....	995,966	\$ 5,669,408	\$ 5.72
1881.....	925,795	6,154,258	6.65
1882.....	962,949	6,663,105	6.91
1883.....	1,028,729	7,057,603	6.86
1885.....	1,268,530	8,890,024	7.01
1887.....	1,514,578	11,496,708	7.59
1889.....	1,464,914	13,432,320	9.17
1891.....	1,338,811	12,683,648	9.47
1893.....	1,366,613	13,102,794	9.58

YEAR	POPULATION	TOTAL TAX FOR ALL PURPOSES	AMOUNT OF TAX PER CAPITA
1895.....	1,334,734	13,022,863	9.76
1896.....	1,336,659	12,612,125	9.43
1897.....	1,336,789	12,593,451	9.42
1898.....	1,390,969	14,104,943	9.96
1899.....	1,425,119	13,328,330	9.35
1900.....	1,444,708	13,548,901	9.38
1901.....	1,467,808	13,996,303	9.54
1902.....	1,464,628	14,477,601	9.88
1903.....	1,487,847	16,903,157	9.56
1904.....	1,535,160	16,063,637	10.46
1905.....	1,544,968	17,880,379	11.57
1906.....	1,611,791	18,485,746	11.47
1907.....	1,651,331	20,497,603	12.41

The percentage of increase in the various kinds of taxes in 1907 compared with 1901 was as follows:

State tax increase.....	37.1
County tax increase.....	31.9
City tax increase.....	64.8
Township tax increase.....	61.3
School tax increase.....	49.8
Total tax increase.....	46.4

—*Report of Kansas Tax Commission, 1909, pp. 6, 7.*

³²² *Report of Kansas Tax Commission, 1909, p. 25.*

³²³ *Report of Kansas Tax Commission, 1909, pp. 25, 26.*

³²⁴ See Vol. I, Chapters VII and IX.

³²⁵ *Report of Massachusetts Joint Special Tax Commission, 1900, pp. 12, 13.*

³²⁶ *Report of New York Special Tax Commission, 1907, p. 7.*

³²⁷ *Report of Minnesota Tax Commission, 1908, p. 39.*

³²⁸ *Report of Wisconsin Tax Commission, 1903, p. 115.*

³²⁹ *Report of Minnesota Tax Commission, 1908, p. 43.*

³³⁰ The following is a copy of the tax inquisitor law of Ohio passed in 1888:

“An Act to secure a fuller and better return of property for taxation, and to prevent omissions of property from the tax duplicate.

"1. *Be it enacted by the General Assembly of the State of Ohio,* That the county commissioners, county auditor and county treasurer, or a majority of said officers, in any county, when they have reasons to believe that there has not been a full return of property within the county for taxation, shall have power to employ any person to make inquiry and furnish the county auditor the facts as to any omission of property for taxation, and the evidence necessary to authorize him to subject to taxation any property improperly omitted from the tax duplicate; no payment to be made for such services, except in accordance with the terms of agreement between the officers or a majority of them and such person, and such payment shall be made only out of money actually paid into the county treasury as taxes on such omitted property, and such compensation shall not exceed twenty per cent. of the amount of such taxes on the returns, omitted moneys, credits, investments and bonds, stocks, joint stock annuities, or other valuable interest held by a resident of this state, or by others for him; and all such allowance shall be apportioned ratably by the county auditor among all the funds entitled to share in the distribution of such taxes."—*Report of Kansas Tax Commission, 1909, pp. 16, 17.*

³³¹ Quoted in *Report of Kansas Tax Commission, 1909, p. 17.*

³³² *Report of Kansas Tax Commission, 1909, p. 22.*

³³³ *Report of Minnesota Tax Commission, 1908, p. 167.*

³³⁴ *Report of Kansas Tax Commission, 1909, pp. 30, 31.*

³³⁵ *Report of Minnesota Tax Commission, 1908, p. 223.*

³³⁶ *Report of Minnesota Tax Commission, 1908, p. 44.*

³³⁷ *Report of Tax Commission of Delaware, 1909, p. 15.*

³³⁸ *Report of Massachusetts Joint Special Committee on Taxation, 1907, p. 17.*

³³⁹ *Report of Massachusetts Joint Special Committee on Taxation, 1907, p. 76.*

³⁴⁰ *Report of Massachusetts Tax Commission, 1909, pp. 20-28.*

³⁴¹ *Report of Massachusetts Tax Commission, 1909, p. 32.*

³⁴² *Report of Massachusetts Tax Commission, 1909, pp. 36, 37.*

³⁴³ *Proceedings of the First National Conference on State and Local Taxation*, 1907, p. xviii. See Appendix A.

³⁴⁴ Concerning this the language of the commission is as follows:

"During the assessment season of 1903 and in all subsequent assessments, the practical effect of that act has been to exempt mortgages in all cases where by the terms of the mortgage the mortgagor has promised to pay all taxes and assessments against the mortgaged premises. Nearly all mortgages drawn before as well as since the passage of that act, contain such a clause, and mortgages are, therefore, in effect exempt from taxation.

"Largely as the result of the passage of said act, I believe, assessing officers have abandoned almost every effort to reach money and credits. This is apparent in the assessments of 1903 and all subsequent assessments.

"Governor La Follette, in 1905, with a qualification, and Governor Davidson, in 1907, unqualifiedly, recommended in their messages to the legislature the restoration of mortgages to the taxable list. The legislature has, however, refused to take such action and mortgages remain exempt while money and credits, other than mortgages upon real estate, remain in law taxable while very few are assessed.

"As the legislature seems determined to adhere to the policy that mortgages shall remain exempt from taxation, logic and consistency as well as justice argue in favor of the exemption of all other credits and money as well. Of all credits those evidenced by mortgages can be most easily reached, and money is more elusive than any kind of credit. There are at least two parties having knowledge of every item of credit, while the owner alone is cognizant of the amount of money he possesses. Money earns nothing; when converted into a credit it becomes a source of profit."—*Report of Wisconsin Tax Commission*, 1909, pp. 22, 23.

³⁴⁵ The relation of banking associations and insurance companies to the problem herein outlined will be presented later.

³⁴⁶ "The growing disposition to tax more and more heavily large estates left at death is a cheering indication of the growth of a salutary change in public opinion. . . . Of all forms of taxation this seems the wisest. Men who continue hoarding great sums all

their lives — the proper use of which for public ends would work good to the community from which it chiefly came — should be made to feel that the community, in the form of the State, cannot thus be deprived of its proper share. . . . By all means such taxes should be graduated, beginning at nothing upon moderate sums to dependents, and increasing rapidly as the amounts swell, until of the millionaire's hoard, as of Shylock's, at least

'The other half

Comes to the privy coffer of the State.'

"This policy would work powerfully to induce the rich man to attend to the administration of wealth during his life, which is the end that society should always have in view, as being by far the most fruitful for the people. Nor need it be feared that this policy would sap the root of enterprise and render men less anxious to accumulate, for, to the class whose ambition it is to leave great fortunes and be talked about after their death, it will attract even more attention, and, indeed, be a somewhat nobler ambition, to have enormous sums paid over to the State from their fortunes.

"That the parent who leaves his son enormous wealth generally deadens the talents and energies of the son, and tempts him to lead a less useful and less worthy life than he otherwise would, seems to me capable of proof which cannot be gainsaid.

"If you will read the list of the immortals who 'were not born to die,' you will find that most of them have been born to the precious heritage of poverty.

"Why should men leave great fortunes to their children? If this is done from affection, is it not misguided affection? Observation teaches that, generally speaking, it is not well for the children that they should be so burdened. Neither is it well for the State. Beyond providing for the wife and daughters moderate sources of income, and very moderate allowances indeed, if any, for the sons, men may well hesitate; for it is no longer questionable that great sums bequeathed often work more for the injury than for the good of the recipients. Wise men will soon conclude that, for the best interests of the members of their families, and of the State, such bequests are an improper use of their means." — *Report of Minnesota Tax Commission*, 1908, p. 173.

³⁴⁷ *Proceedings of the First National Conference on State and Local Taxation*, 1907, p. 232.

³⁴⁸ *Report of Minnesota Tax Commission*, 1908, p. 185.

³⁴⁹ *Report of Massachusetts Joint Special Commission on Taxation*, 1907, p. 27.

³⁵⁰ *Report of New York Special Tax Commission*, 1907, pp. 9-12.

³⁵¹ *Proceedings of the Second Annual Meeting of The Association of Life Insurance Presidents*, 1908, pp. 41, 42.

³⁵² *Proceedings of the First National Conference on State and Local Taxation*, 1907, pp. 485-514.

³⁵³ *Proceedings of the First National Conference on State and Local Taxation*, 1907, pp. 515-527.

³⁵⁴ The writer has reason to believe that this is a real and not an imaginary danger.

³⁵⁵ It is perhaps unnecessary to state that this rule does not apply to laws of a general nature like many of the tariff schedules, which, at least in the past, have been enacted primarily from the standpoint of special interests.

INDEX

INDEX

- Ad valorem system**, 25, 56-84, 159, 257; growing demand for, 37; opposition of railroads to, 39; necessity for, 54; law providing for, 78-82; fundamental principles of, 82-84; compromise character of, 84; permanence of, 85, 226; dissatisfaction with, 91; relative importance of, 144, 145; adoption of, 152; adverse judgment on, 160; merits of, 160, 161, 244; adherence to, 206; preference for, 242; predominance of, 243; retention of, favored, 274
- Adair County**, 120, 121
- Adams, H. C.**, 145; statement by, 159, 162
- Adams, T. S.**, 270
- Adams County**, 120, 121
- Administration**, failure in, 173, 180, 188; importance of, 174; machinery of, 183, 184; reasons for failure of, 184; changes in, 189; decentralization in, 208, 209, 221, 247; need of centralization in, 211, 212
- Afton**, 132
- Alabama**, railway taxation in, 143, 166; reference to, 218, 447; mortgage registry tax in, 252; insurance taxation in, 265; tax commission in, 291; county assessor system in, 366; average assessment in, 448
- Alaska**, 141; insurance taxation in, 265
- Annuities**, assessment of, 186
- Appanoose County**, 406, 407
- Applegate, C. C.**, 46
- Arispe**, 132
- Arizona**, railway taxation in, 144, 167; reference to, 225, 447; insurance taxation in, 265; county assessor system in, 366; average assessment in, 448
- Arkansas**, railway taxation in, 143, 166; insurance taxation in, 265, 267; county assessor system in, 366; reference to, 447; average assessment in, 448
- Arlington**, 127
- Assessment**, failure to distinguish between taxation and, 32, 33, 75; sentiment in favor of local, 38; distinction between taxation and, 52, 54, 55, 113; argument in favor of local, 62; advocates of local, 74; demand for local, 76; reference to, 82; methods of making, 141, 142, 146, 147, 161, 208, 209; variations in, 156, 235, 236; classification of property for, 159; machinery for, 173, 174-184; method of changing, 176; basis for, 185-189; special methods of, 187; inequalities in, 209; adherence to local, 213; county system of, 220-226, 365-369; ex officio board of, 221; uniformity in, at actual value, 226-241; weakness of local, 230, 231, 233; evils of undervaluation in, 232; increase in, in West Virginia, 239; increase in, in Kansas, 240, 241; geographical system of, 274
- Assessment roll**, correction of, 174, 176, 177; examination of, 175; importance of, 227, 228
- Assessors**, administration by, 59; duties of, 174, 175, 177, 178, 183, 185; provision for deputy, 174, 178; election of, 177, 178, 181, 183; power

- of equalization taken from, 180; assessment of corporations by, 189; railroads assessed by, 198; failure of, to list property, 210; importance of, 221, 233, 234, 235; meetings of, 222; methods of choosing, 222; assessment of general property by, 224; performance of duties by, 232, 233; inequalities caused by, 235, 236; number of, in Minnesota, 237; low assessment by, 238, 239
- Audubon, 124, 125
- Audubon County, 118, 119, 123, 124, 125, 126, 128, 131
- Australasia, inheritance taxation in, 261
- Baldwin, Mr., 426, 427
- Baltimore, routes from, to West, 389
- Baltimore and Ohio Railroad, 390
- Bank Commissioners, duties of, 192
- Bank notes, assessment of, 185, 186
- Banks, prohibition of, 192; taxation of, 192-195, 269, 270
- Barkley, Alonzo J., 430
- Beardsley, Charles, 33, 50, 53, 74
- Beck, Joseph M., opinion delivered by, 105, 106, 109, 110, 434-437; reference to, 201
- Benton County, 3
- Big Sioux River, 6
- Bills, John C., statement by, 70, 71
- Bissell, Frederick E., 18, 393, 394
- Black Hawk County, 120
- Black Hawk Purchase, 4, 390
- Blake, F. A., 64
- Blakely, I., 64
- Bloomington, 3
- Board of Supervisors, powers and duties of, 179, 180, 181, 183; change in personnel of, 181; reference to, 209
- Boies, Horace, 217
- Boone, desire for railroad improvements at, 73
- Brayton, 124, 125
- Bridges, taxation of, 62, 81, 106, 107, 113, 114, 437; value of, to railroads, 64, 77
- Buchanan County, 3, 46, 406
- Buckham, F. L. 32, 399
- Buffalo (New York), 5
- Bullock, Charles J., statement by, 152, 260, 261
- Burke, John E., bill introduced by, 59
- Burlington, 3, 13, 37, 70; desire for railroad to Missouri River from, 6; railroad taxes received by, 62; railroad property in, 440
- Burlington, Cedar Rapids & Northern Railroad, 119
- Burlington & Missouri River Railroad, land grant to, 7, 9
- California, discovery of gold in, 7; railway taxation in, 143, 166; constitutional amendment in, 163, 164; reference to, 166, 219, 220, 270, 438, 444, 447; inheritance taxation in, 262, 264; insurance taxation in, 265; tax commission in, 291; 300-302; county assessor system in, 306; average assessment in, 448
- Camanche & Council Bluffs Railroad, right of way granted to, 6
- Campbell, Mr., arguments by, 41; reference to, 52
- Campbell, E., 67
- Campbell, F. T., 53
- Canada, business or rental taxes in, 252, 253, 259, 270, 274, 373-376; inheritance taxation in, 261
- Carnegie, Andrew, 260
- Carpenter, Cyrus C., recommendation of, 58; reference to, 121
- Carter, Charles W., two-cent fare bill by, 430
- Cedar County, 3, 11, 68, 116
- Cedar Falls, proposed railroad west from, 396

- Cedar Rapids & Missouri River Railroad, land grants to, 8, 9
- Census Board, administration of railroad tax by, 59; valuation by, 60, 67, 68; reference to, 74, 181; duties of, 79, 80, 176, 178, 179; replacing of, by Executive Council, 85; nominal functions of, 177
- Chambers, J. C., 74
- Cheshire, Thomas A., law drafted by, 204
- Chicago, communication between Iowa country and, 5; railroad connection between New York and, 6; railroad to Milwaukee from, 6; reference to, 389
- Chicago, Burlington & Quincy Railroad, 119, 120, 133, 134, 426
- Chicago, Milwaukee & St. Paul Railroad, 6, 119, 133, 426; land grant to, 9; bridge built by, 114
- Chicago, Rock Island & Pacific Railroad, land grants to, 8, 9; reference to, 119, 124, 133, 394, 420, 426; act relative to, 395; property owned by, 418
- Chicago & Great Western Railway, 119, 133, 134
- Chicago & Northwestern Railroad, 119, 124, 133
- Cities, right to tax railroads claimed by, 15, 24, 54, 117; attitude of, toward taxation of terminals, 37; desire of, for local assessment, 38, 39; amounts contributed to railroads by, 39; petitions from, 40; proposal to permit railroad taxation by, 51; opposition of, to Gear bill, 60; right of railway taxation secured by, 62; injustice to, 65, 66, 68, 72, 74; railway tax law denounced by, 69; limitation on rights of, 71; struggle between country districts and, 72; loss of rights by, 74, 84, 200; high rate of taxes in, 78; amount of railroad taxes levied by, 83; right of, to tax railroads, 103-111, 114, 117, 118, 123, 135, 136; failure of, to obtain relief, 133; condition of, under tax law, 133, 134; common interests of country districts and, 138; election of assessors in, 181; complaints of, 199; distribution of railway taxes to, 244; plan of tax reform recommended for, 245
- Civil War, readjustment of tax laws caused by, 12; necessity for greater revenue during, 13; reference to, 15; tax problems at close of, 19; growth of railway enterprise during, 21, 22
- Clark John T. 26, 27
- Clark, William Penn, 27
- Clarke, Geo. W., 427, 430
- Clarke, H. T., 135, 136
- Clarke County, 406
- Claussen, H. R., 74
- Clayton County, 3, 120, 436
- Clermont, 127
- Clinton, 434
- Clinton County, 3
- Cole, Chester C., opinion delivered by, 105, 432
- Collateral heirs, taxation of estates passing to, 207; maximum rate on, 261
- Collection, fiscal machinery for, 173, 174-184; administration of, 223
- Colorado, railway taxation in, 143, 166; reference to, 225, 447; insurance taxation in, 265; county assessor system in, 366; average assessment in, 448
- Columbus (Ohio), meeting of tax association at, 447
- Compromise law of 1870, movement leading up to, 25
- Congress, petitions to, from Iowa, 6, 10; passage of Iowa Land Bill by,

- 7; land granted to railroads by, 7, 8, 9, 38
- Connecticut, railway taxation in, 143, 145, 147, 166, 167; stock and bond tax of, 160, 444; reference to, 165, 218; insurance taxation in, 265, 267; tax commissioner in, 292; average assessment in, 448
- Constitution of 1846, prohibition of banks in, 192
- Constitution of 1857, provision of, relative to taxation of corporations, 42; violation of, 47, 69, 111; uniformity in taxation required by, 51, 52; provision of, relative to taxation, 58; provision of, relative to banks, 192
- Constitutional Convention, 25-28
- Contribution, underlying principles of, 173, 174, 184, 189
- Converse, A., 74
- Cook County, 3
- Cordozo, Judge, 395
- Corporations, discussion of taxation of, 26-28; need of control of, 31; attitude of political parties toward, 56; assessment of, 183, 184, 185, 224; taxation of, 189-206, 255, 257, 258; distinction between classes of property of, 191; unfortunate position of, 210, 211; taxation of public service, 241-247; distribution of taxes from, 273, 274
- Council Bluffs, desire for railroad from Davenport to, 6; reference to, 130, 138, 134, 395; railroad from Des Moines to, 394
- Counties, distribution of railroad taxes to, 11, 12, 14, 15, 19, 20, 21, 37, 46, 48, 51, 57, 61, 62, 83, 103, 116, 117, 120, 121, 122; aid to railroads by, 33; railroad taxes for relief of, 35; variations in assessments between, 65; amount of railroad tax received by, 122; remedy for inequalities between, 163; assessment by, 175, 178; functions of, in taxation, 182, 183; inequalities between, 226
- County assessment, discussion of, 220-226; data relative to, 365-369
- County Commissioners, levy made by, 174, 175; duties of, 175; power taken from, 176
- County Court, levy of taxes by, 176, 177
- County supervisor of taxes, 229, 230, 234
- County Treasurer, collection of taxes by, 175, 181, 183
- Country districts, benefit of Duncombe bill to, 77; compromise between railroads and, 77; common interests of cities and, 138
- Credits, assessment of, 12, 186; deduction of debts from amount of, 191; exemption of, 211, 212; deduction of, favored, 250
- Creston, 132
- Cromwell, 132
- Crossley, J. J., 93, 424
- Cummins, Albert B., recommendation of, 87, 89, 92; reference to, 95, 423, 430
- Curtiss, George, 168
- Cutts, M. E., arguments by, 43, 44; reference to, 46, 48, 405
- Dartmouth College Case, 18
- Davenport, 3, 13, 37, 70, 104; desire for railroad to Council Bluffs from, 6; amount of railroad property assessed in, 72, 418, 431, 432; amount of railroad taxes received by, 420
- Davenport & Iowa City Railroad, right of way granted to, 6
- Davenport & Northwestern Railroad, 119
- Davidson, A. H., statistics compiled by, 431

- Davis, F. M., 64
 Davis County, 68
 Debts, deduction of, 191, 194, 197
 Decatur County, 406
 Deemer, Horace E., 246
 Delaware, railway taxation in, 143, 145, 166; reference to, 219; insurance taxation in, 266; tax commission in, 292; average assessment in, 448
 Delaware County, 3, 68
 Democratic party, attitude of, toward corporations, 36; plank in platform of, 56
 Depots, taxation of, 83, 102
 Des Moines County, establishment of, 4
 Des Moines, 37; railroad from, to Council Bluffs, 394
 Des Moines County, 3, 62, 68
 Des Moines Navigation Company, 30
 Des Moines River, 29; release of lands on, 31
 Des Moines Valley Railroad, land grant to, 9; reference to, 395
 Dining car companies, taxation of, 85-87, 203, 246
 Distribution of railway taxes, 51, 57, 58, 60-62, 64, 65, 75, 78, 83, 101, 103, 115-140, 141, 142, 147, 161, 162, 244, 245
 District of Columbia 141; railway taxation in, 144, 167; insurance taxation in, 266
 Dodge, Augustus Caesar, efforts of, to secure railroad grants, 7
 Doud Amendment, 395, 396
 Dubuque, desire for railroad to Keokuk from, 6; desire for railroad to Missouri River from, 6; reference to, 13, 37, 389, 434, 436; taxation of bridge at, 106, 107; taxation of railroad property in, 108
 Dubuque & Keokuk Railroad, right of way granted to, 6
 Dubuque & Sioux City Railroad, land grant to, 8, 9; reference to, 395
 Dubuque County, 3, 4, 66, 68
 Dudley, Mr., 426
 Duluth (Minnesota), 156
 Duncombe, John F., bill introduced by, 59, 63, 77, 78, 409; arguments of, 64, 65
 Earnings, taxation on basis of, 143, 144, 145, 148, 149, 150, 151, 152
 Eaton, Willard L., 430
 Educational Commission, weakness of, 217
 Edwards, John, 28
 Elgin, 127
 Ellis, George W., amendment proposed by, 27
 England, inheritance taxation in, 261
 English, E. H., bill introduced by, 89; reference to, 430
 Equalization, method of making, 174, 176, 177, 178, 179, 181, 183, 208, 209, 224; perfunctory character of, 187, 213; ex officio board of, 221
 Equalization, State Board of, establishment of, 176; powers of, 176; perfunctory character of, 177; power taken from, 180; assessment of railroads by, 182
 Ericson, C. J. A., statement by, 78
 Europe, sources of revenue in, 251; abandonment of personal property tax in, 252; income tax in, 259; inheritance taxation in, 261
 Executive Council, powers and duties of, 82, 83, 85, 88, 89, 90, 93, 94, 204, 205; Census Board replaced by, 85; reports of, 96, 122, 124; valuation by, 118, 224; equalization by, 183; assessment of corporations by, 183, 184; ex officio assessment by, 206; reference to, 209, 216, 230, 246, 272
 Exira, 124, 125
 Express companies, taxation of, 203-205, 242, 246, 255; assessment of, 257

- Fairall, Samuel H., 50, 74; letter from, 77
- Farmers, local taxation of railroads demanded by, 54; railroads supported by, 77; advantages enjoyed by, 131; attitude of, toward taxation, 210; compromise between railroads and, 242
- Fayette, 127
- Fayette County, 3, 46, 118, 119, 120, 126, 127, 128, 129, 131, 133, 406
- Florida, railway taxation in, 143, 166; insurance taxation in, 266; county assessor system in, 366; reference to, 447; average assessment in, 448
- Fort Dodge, proposal for railroad through, 396
- Fort Madison, 389
- Fox River, 5, 389
- Franklin Center, meeting at, 399
- Freight lines, taxation of, 246
- Freight rates, regulation of, 67
- Fremont County, 68
- Frontier, advancement of, 7
- Funk, A. B., bill introduced by, 204
- Gear, John H., bill introduced by, 59, 60-63, 69, 71, 409, 413-415, 416; reference to, 67; protest by, 68
- General property tax, substitutes for, 122, 123; permanence of, 159; historical analysis of, 172-189; condemnation of, 173; theory of contribution at basis of, 173; reason for failure of, 177, 184, 221, 247; administrative failure of, 180, 187; corporations taxed under, 189; fundamental principles of, 184-189; relation of banks to, 194, 195; relation of railroads to, 202, 203; adherence to principles of, 206, 213; importance of assessment to success of, 235; location of burdens of, 249
- Georgia, railway taxation in, 143, 166; reference to, 162, 225, 247; insurance taxation in, 266; county assessor system in, 367; average assessment in, 448
- Gray, 124, 125
- Great Lakes, 5
- Great Lakes, routes to Iowa country from, 389
- Green, J. W., 64, 67, 73
- Gross receipts, proposal for progressive rate on, 19; amounts of, 96, 98, 99, 100; method of determining, 150; tax based on, 154, 155
- Gross receipts law, passage of, 14; provisions of, 14, 15; early succession of, 15, 16; changes in, 20; inequalities under, 32; desire for modification of, 39; court decision relative to, 62; method of taxing bridges under, 62; reference to, 108; tax distribution under, 116; demand for repeal of, 117
- Gross receipts system, demand for abolition of, 36; bill for continuation of, 42; arguments for and against, 42-54; vital defect of, 54; desire for continuation of, 59; abandonment of, 64, 75, 152; success of railroads in securing, 75; merits of, 160, 161; analysis of, 199; application of, 206
- Grundy County, 120, 121
- Hale, William, speech of, 29
- Hall, B. J., bill introduced by, 64; reference to, 66
- Hall, J. C., 26
- Hammond, M. B., statement by, 251
- Hawaii, insurance taxation in, 266
- Hawkeye, 127
- Hawley, T., 53
- Healy, Thomas D., 93, 423
- Henry County, 3
- Herriott, John, 92, 94
- Hilsinger, George E., 430
- Hogue, Ernest L., bill introduced by, 430

- Holdridge, D. D., 30
- Hopkirk, William, bill introduced by, 42, 46, 47, 48, 49, 401-403; defense of bill by, 44, 45
- Hubbard, Nathaniel M., 76, 77, 78, 84, 182; compromise secured by, 242
- Hughes, John, Jr., anti-pass bill introduced by, 430
- Hull, J. A. T., letter from, 37; reference to, 401
- Hurley, J. S., 74
- Idaho, railway taxation in, 143, 166; reference to, 225, 447; exemption of personal property in, 252; insurance taxation in, 266, 267; county assessor system in, 367; average assessment in, 448
- Illinois, early railroad building in, 6; method of taxing railroads in, 41, 42, 43, 52; low railroad valuations in, 48; reference to, 49, 162, 219, 223, 225, 447; railroad tax rate in, 123; railway taxation in, 143, 153, 166, 167, 168; insurance taxation in, 266, 267; tax commission in, 292; county assessor system in, 367; average assessment in, 448
- Illinois Central Railway, 133
- Illinois River, 389
- Improvements, taxation of, 185, 259
- Income tax, 259
- Indian Territory, railway taxation in, 144, 167
- Indiana, railway taxation in, 143, 153, 166, 168; reference to, 218, 223, 252, 447; insurance taxation in, 266, 267; tax commission in, 292; county assessor system in, 367; average assessment in, 448
- Indiana, Iowa country in possession of, 4
- Inheritance tax, failure of, 173; means of increasing efficiency of, 173, 174; judicial administration of, 177; historical analysis of, 206-208; reference to, 255; problem of reform in, 260-265; need of reform in, 274
- Insurance companies, taxation of, 195-197; problem of reform in taxation of, 265-269
- International Tax Association, 162, 213, 257, 268; constitution of, 277-285; resolutions adopted by, 285-290; meetings of, 447
- Interstate Commerce Commission, 122
- Iowa, epochs in railway taxation in, 3; problems of transportation in early, 3; transportation facilities in early, 4; absence of internal improvement schemes in, 5; road building policy in, 5; petitions to Congress from, 6; demand for railroads in, 6, 8, 31; land grants to railroads in, 7, 8, 9, 38; small amount of revenue in early, 10; importance of encouraging railroads in, 16; growth of railroads in, 22, 96-100; need of, for eastern capital, 30; conditions disadvantageous to, 49; railway tax distribution in, 115, 162; conflicting forces in, 117; railroad tax rate in, 123, 429; administration of railway taxation in, 130; railway taxation in, 143, 166, 168; reform movements in, 171, 213, 214; backward movement in, 182; problem of tax reform in, 213-274; amount of revenues of, 216; lax administration in, 217; insurance taxation in, 266; success of bank taxation in, 269, 270; assessment of railways in, 441; average assessment in, 448
- Iowa, Territory of, establishment of, 4; taxation during period of, 174, 175, 184, 185; provision for roads in, 390
- Iowa Central Railroad, land grant to, 8
- Iowa City, 3
- Iowa country, opening of, to settle-

- ment, 4; trade routes to, 4, 5, 389
- Iowa Falls & Sioux City Railroad, land grant to, 9
- Iowa Land Bill, passage of, 7, 390
- Iowa Municipalities, League of, campaign inaugurated by, 91; resolution of, 134; reference to, 200
- Iowa Western Railroad, right of way granted to, 6
- Irish, John P., letter from, 18, 19; reference to, 33, 44, 46, 64, 65, 66
- Iverson, S. G., statement by, 149, 150
- Jackson, Frank D., recommendation of, 87
- Jackson County, 3, 68
- Jasper County, 418
- Jefferson County, 44, 61, 62, 66, 68
- Johnson County, 3, 11, 68, 116
- Jones, George W., efforts of, to secure railroad grants, 7
- Jones County, 3
- Junkin, Joseph M., bill introduced by, 92, 94, 422, 428; reference to, 93, 423
- Kansas, railway taxation in, 143, 166, 168; reference to, 218, 222, 223, 270, 273, 365, 447; success of tax commission in, 239-241; insurance taxation in, 266; tax commission in, 293; county assessor system in, 367; average assessment in, 449
- Keables, B. F., 46, 47
- Kentucky, railway taxation in, 143, 166; insurance taxation in, 266; county assessor system in, 367; reference to, 447; average assessment in, 449
- Keokuk, desire for railroad from Dubuque to, 6; desire for railroad to Missouri River from, 6; railroad property in, 418
- Keokuk, Fort Des Moines & Minnesota Railroad, 30
- Keokuk County, 3
- Kirkwood, Samuel J., recommendation of, 13; reference to, 16, 29
- Lacey, John F., 45, 46; speech by, 406
- Land grants, amount of, to railroads, 7, 8, 9, 18, 38; bill for resumption of, 29-31; reference to, 43, 49
- Larrabee, William, book by, 8; bill introduced by, 59; reference to, 74, 77, 86, 139
- La Salle County (Illinois), 42, 52
- Leahy, M. A., 64
- Lee County, 3, 47, 66, 68, 399, 400, 401
- Levy, amount of, 122; fiscal machinery for, 173, 174-184
- Lewis, L. W., 93, 95, 423, 428, 429
- Linn County, 3
- Lorimor, 132
- Louisa County, 3
- Louisiana, railway taxation in, 143, 166; reference to, 219, 262, 447; insurance taxation in, 266; tax commission in, 293; assessor system in, 367; average assessment in, 449
- Louisiana Purchase, 4
- Lowe, Ralph P., opinion delivered by, 104, 105
- Lowry, Robert, 50, 74
- McClain, Emlin, opinion delivered by, 194
- McCulloch, E. S., 53, 74
- McGregor, desire for railroad to Missouri River from, 6; reference to, 434
- McGregor & Missouri River Railroad, land grant to, 9
- McGregor & Western Railroad, 395
- McNutt, Samuel, struggle against railroads lead by, 18; letter from, 18, 19, 393-396, 397, 401; reference to, 35, 50; statement by, 39
- Machine shops, taxation of, 83
- Mahin, John, opposition of, to gross

- receipts system, 42, 43; reference to, 45, 46, 405
- Maine, railway taxation in, 143, 148, 149, 150, 151, 166; reference to, 219; insurance taxation in, 266; tax commission in, 293; average assessment in, 449
- Marion County, 47, 418
- Marshalltown Gas Company, 447
- Maryland, railway taxation in, 143, 146, 148, 151, 166; reference to, 218, 252, 254, 447; insurance taxation in, 266; tax commissioner in, 293; county assessor system in, 367; average assessment in, 449
- Massachusetts, railway taxation in, 143, 145, 147, 167; reference to, 218, 254, 256, 438; recommendations for reform in, 255; inheritance taxation in, 262; insurance taxation in, 266, 267; tax commissioner in, 294; taxation of stock in, 444; average assessment in, 449
- Maynard, 127
- Merrill, Samuel, recommendation of, 39, 57, 58; reference to, 121
- Michigan, railroad tax rate in, 123; railway taxation in, 143, 147, 152, 153, 159, 167, 168; reference to, 218; insurance taxation in, 266; tax commission in, 294; average assessment in, 449
- Michigan, Territory of, counties established by, 4
- Millage tax, establishment of, 175
- Miller, William E., opinion delivered by, 111, 112, 113
- Milwaukee, railroad from Chicago to, 6; reference to, 389; meeting of tax association at, 447
- Minnesota, railroad tax rate in, 15, 123, 429, 445; railway taxation in, 143, 145, 148-151, 154-158, 160, 161, 167, 168; gross receipts tax of, 160, 161; reference to, 165, 218, 223, 225, 270, 273, 438; basis of assessment in, 235-237; mortgage registry tax in, 252, 253, 259, 370-373; insurance taxation in, 266; tax commission in, 294, 309-317; average assessment in, 449
- Mississippi, railway taxation in, 143, 167; insurance taxation in, 266; county assessor system in, 367; reference to, 447; average assessment in, 449
- Mississippi & Missouri Railroad, land grant to, 8; reference to, 11, 116, 298; consolidation of, with Rock Island, 394
- Mississippi River, settlements on, 3; counties west of, 4; transportation on, 4, 5, 389; importance of railroad in settlement west of, 5; advancement of frontier beyond, 7; taxation of bridges across, 62, 81, 106, 107, 113, 114, 437
- Missouri, railway taxation in, 143, 167, 168; constitutional amendment in, 163, 164, 165; reference to, 166, 219, 223, 225, 270, 447; insurance taxation in, 266; tax commission in, 295; county assessor system in, 367, 368; average assessment in, 449
- Missouri River, desire for railroads to, 6; taxation of bridges across, 62, 81, 107, 113, 114, 437
- Mitchell, Alexander, railroad planned by, 6
- Moir, W. G., 30
- Molsberry, F. M., bill introduced by, 430
- Moneys and credits, deduction of debts from amount of, 194; assessment of, 197; failure to reach, 209, 211; taxation of, 259
- Monroe County, 406
- Montana, railway taxation in, 143, 167; reference to, 262, 447; insurance taxation in, 266; county assess-

- or system in, 368; average assessment in, 449
- Mortgages, registry tax on, 252, 259, 260; taxation of, 259; plan for exemption of, 259, 260
- Murdock, Samuel, 46, 47, 48, 407
- Murray, W. B., 74
- Muscatine, 3, 6, 37
- Muscatine County, 3, 11, 45, 66, 116, 120, 121
- Napoleon Bonaparte, purchase of Louisiana from, 4
- National banks, deduction of debts by stockholders in, 191; taxation of, 193, 194
- Nebraska, terminal tax law in, 134, 135; railway taxation in, 143, 167, 168; reference to, 162, 223, 225, 447; insurance taxation in, 266; average assessment in, 499; county assessor system in, 368
- Nevada, railway taxation in, 143, 167; insurance taxation in, 266; county assessor system in, 368; reference to, 447
- New Hampshire, railway taxation in, 143, 167; reference to, 219; insurance taxation in, 266; tax commission in, 295; average assessment in, 449
- New Jersey, railway taxation in, 143, 147, 167; reference to, 165, 218, 245, 274, 438; insurance taxation in, 266, 267; tax commission in, 295, 355-361
- New Mexico, railway taxation in, 144, 167; reference to, 225, 447; insurance taxation in, 266; county assessor system in, 368
- New Orleans, 4
- New York, trade routes to West from, 4, 5; railroad connection between Chicago and, 6; reference to, 27, 165, 218, 438; method of securing revenue in, 122; railway taxation in, 143, 152, 167; mortgage registry tax in, 252, 259; inheritance taxation in, 262, 264; insurance taxation in, 266; tax commission in, 296; average assessment in, 449
- New York City, cost of government of, 248
- Newbold, Joshua G., recommendation of, 140; reference to, 201
- Noble, F. H., statement by, 200
- Non-residents, taxation of, 11, 190
- North Carolina, railway taxation in, 143, 167; reference to, 218; insurance taxation in, 266; tax commission in, 296; average assessment in, 449
- North Dakota, railway taxation in, 143, 167; insurance taxation in, 266; average assessment in, 449
- O'Donnell, Fred, amendment by, 67, 68
- Oelwein, 127, 128, 133
- Ohio, 27, 165, 218, 261; railway taxation in, 143, 146, 152, 167; efforts of, to enforce personal property tax, 250, 251; insurance taxation in, 266; tax commissions in, 297, 317-355; average assessment in, 449
- Ohio River, transportation on, 5, 389
- Oklahoma, railway taxation in, 144, 167; insurance taxation in, 266
- Omaha, 136
- Omaha Bridge & Terminal Railway, 133
- Ontario (Canada), business tax of, 254, 255, 373-376; reference to, 444
- Oregon, railway taxation in, 143, 167; reference to, 218, 447; insurance taxation in, 266, 267; tax commission in, 297; county assessor system in, 368; average assessment in, 449
- Ottumwa, demand of, for railroads, 73

- Palace car companies, taxation of, 203, 246
 Palmer, David P., amendment proposed by, 26
 Patterson, John G., 51, 52, 53, 408
 Pelsner, Louis, 390
 Pennsylvania, method of securing revenue in, 122; railway taxation in, 143, 145, 147, 152, 167; reference to, 165, 219, 438; tax on credits in, 252, 253, 254, 256, 259, 260, 270, 274; inheritance taxation in, 262; insurance taxation in, 266; tax commission in, 298; personal property tax of, 376-386; exemption of non-resident bond holders in, 441, 444; average assessment in, 449
 Personal property, assessment of, 185, 187; failure to reach, 209, 248; problem of reform in taxation of, 247-260; exemption of, 248, 252
 Personal property tax, need of substitutes for, 212; solution of problem of, 248; condemnation of, 249, 250; substitutes for, 252-257, 370-386; abolition of, recommended, 257, 274
 Peters, John H., amendment proposed by, 27
 Phelaa, Raymond V., 234
 Philadelphia, 5; routes from, to West, 389
 Pittsburg, 5; routes from, to West, 389
 Porter, Claude R., 93, 423; amendments by, 94, 95
 Pottawattamie County, 126, 130, 131
 Prairie du Chien, railroad to, 6
 Pratt, H. O., 46
 Premiums, taxation of, 195, 196, 197, 267-269
 Primary elections, 95
 Price, Daniel W., 28
 Property, basis for assessment of, 185-189; classification of, for taxation, 255-257
 Railroad Commissioners, Board of, 18, 25; recommendation of, 139
 Railroads, importance of, in western settlement, 4; demand for, 4, 5; national movement for building of, 7; justification for grants to, 7; land grants to, 7, 8, 9, 38; reasons for non-taxation of, 8, 10; first method of taxing, 10-12; distribution of taxes from, 11, 12, 37, 46, 48, 51, 57, 58, 60-62, 78, 83, 115-140, 161, 162; amount of taxes paid by, 12; sentiment favoring higher taxes on, 13, 14; gross receipts tax on, 14, 15; importance of encouraging, 16, 30, 31, 34; change of attitude toward, 16, 17, 28, 35, 36, 38; opposition of, to regulation, 17, 19; rate discrimination by, 17; problem of regulation of, 18; free gifts to, 19; proposed change in gross receipts tax on, 19; reports by, 19, 88, 89, 90, 91, 101; progressive tax rate on, 20; statistics of, 21, 120, 127, 130, 132, 133; growth in number of miles of, 22; increase in gross earnings of, 22; increase in amount of taxes paid by, 22, 23; struggle for regulation of, 25; effect of constitutional provision upon building of, 27; bill for resumption of land grants to, 29-31; difficulties of, in building lines, 30; eastern capital in building of, 30; release of lands by, 31; indemnity to, 31; discussion of method of taxing, 31-35; special privilege to, 32; meetings to raise subscriptions for, 35; meetings to repudiate bonds of, 35; scheme for disposal of taxes from, 35; difficulties in operation of, 36; demand of, for uniform valuation, 36, 37; attitude of, toward taxation of terminals, 37; assessment of, by State board, 38; contributions to, by

cities, 39; ad valorem system opposed by, 39; results of equal taxation upon, 40; petitions relative to taxation of, 40; meeting of joint committee on, 40-42; bill for taxation of, on general property basis, 42; debate on taxation of, in 1870, 42-54; demand for taxation of real and personal property of, 43, 44; tax rate on, in 1870, 44; correct amount of taxes by, 50; amount of money donated to, 50; method of valuation of, 53; differences in amount of business done by, 53; public opinion relative to, 56; proposed restrictions on gifts to, 57; inequalities in taxation of, 58; bills for taxation of, 59, 63; local assessment of, favored, 62; arguments for local assessment of, 64-66; arguments for centralized control of, 64-66; connection between taxation and regulation of, 67; valuation of, by Census Board, 67, 68; local taxation of, 68; unjust taxation of, 68; protest against exemption of property of, 69; law in interests of, 72; sectional differences of opinion relative to, 73; compromise secured by, 74; method of taxation favored by, 75; sentiment favoring property tax on, 75; opposition of, to local taxation, 76; different methods of taxation of, 76, 141-168; desire of, to escape taxation of terminals, 77; compromise between country districts and, 77; victory for, 78; law providing for ad valorem taxation of, 78-82; basis for levy of taxes on, 83; method of valuation of, 83, 84, 118, 153-161; levy and collection of taxes on, 84; changes in law for taxation of, 87-91; efforts to change method of valuation of, 91-95; factors in determin-

ing value of, 92; methods of assessment of, 92, 93; inequality in valuation of, 93; lack of interest in taxation of, 95; tables showing development of, since 1872, 96-100; court decisions relative to taxation of, 102-114; taxation of, through stockholders, 115, 116; location of property of, 116; support of, by counties, 121, 122; tax rates on, per mile, 123; results of taxation of, 130; compromise between rural districts and, 131; municipal rates escaped by, 131, 133; municipal advantages enjoyed by, 133, 136; inequalities in taxation of, 137; bill for terminal tax on, 138; non-local character of, 153; isolation of, for taxation, 159; taxation of interstate traffic of, 161; disposition of revenue from, 162-166, 255; tax rates on, 166-168; problems of local taxation of, 182; historical analysis of taxation of, 197-203; rights and obligations of, 202; relation of, to general property tax, 202, 203; assessment of property of, 224; comparative study of taxation of, 241; compromise between farmers and, 242; classification of property of, 242; problem of reform in taxation of, 242-246; increase in assessment of, 258

Railway rates, effect of taxes upon, 77
Randalia, 127

Rankin, Samuel E., recommendation of, 19, 40, 58, 59; reference to, 21

Rate discrimination, demand for prevention of, 17; reference to, 19

Real estate, assessment of, 185, 187; deduction of capital invested in 190; taxation escaped by, 209, 259, 260; real and assessed value of, 258

Reconstruction, 33

Reform, problem of, 171, 172, 213, 274; basis for, 272-274

- Republican party, attitude of, toward
railroads, 36; plank in platform of,
56
- Resumption Bill, discussion of, 29-31,
33
- Revenue, necessity for greater, during
War, 13, 38; segregation of sources,
38; amount of, in Iowa, 216; lax ad-
ministration of, 217
- Revenue Commission, recommendations
of, 187, 188; report of, 206; weak-
ness of, 217, 218
- Revenue sources, separation of, 162-
166, 270, 271
- Revenue system, historical analysis of,
171-212; method of reforming, 214
- Rhode Island, railway taxation in, 143,
146, 147, 167; reference to, 219;
insurance taxation in, 266; tax com-
mission in, 298; general property
tax in, 441; average assessment in,
450
- Richards, B. B., 74, 421
- Ringgold County, 406
- Rolling stock, listing of, 60; right of
cities to tax, 103, 104
- Rothrock, James H., opinion delivered
by, 109, 110, 111, 433, 434
- Rowell, N. W., 46, 48, 407
- Rural districts, compromise between
railroads and, 131; law in favor of,
200
- Russell, John, bill introduced by, 42,
46, 48, 401, 403-408
- Sabula, taxation of bridge at, 114, 426
- Savery Hotel, meeting of committee
at, 40, 52, 75, 78
- St. Louis, 389
- St. Lucas, 127
- Savings banks, privilege denied stock-
holders in, 191; taxation of, 193,
194; taxation of deposits in, 259
- Saunders, Charles G., bill introduced
by, 138
- Scott County, 3, 11, 68, 116
- Seever, William H., opinion delivered
by, 113
- Seligman, Edwin R. A., 163, 270
- Settlers, need of protection for, 29, 30
- Shaw, Leslie M., 92
- Sheriff, collection of taxes by, 174;
duties of assessor exercised by, 176
- Side tracks, taxation of, 83
- Sioux City, proposed railroad to, 396
- Sioux City & St. Paul Railroad, land
grant to, 9
- Sleeping car companies, taxation of,
85-87, 203
- Smith, Colonel, arguments by 41, 42;
reference to, 75
- South Carolina, railway taxation in,
143, 167; insurance taxation in,
267; average assessment in, 450
- South Dakota, terminal tax law in,
134, 135; railway taxation in, 143,
167; reference to, 162, 223, 447;
insurance taxation in, 267; county
assessor system in, 368; average as-
sessment in, 450
- Spaulding, 132
- Staples, Mr., 148
- State, amount of railroad tax retained
by, 15, 20, 21, 57, 83, 117, 244;
power of, to regulate railroads, 17,
18; proposal to give all railroad
taxes to, 58; amount of taxes paid
to, by counties, 122
- State Bank of Iowa, establishment of,
192; abolition of, 193
- State banks, privilege denied stock-
holders in, 191; taxation of, 194
- Stillwater (Minnesota), 156
- Stockholders, taxation of shares of,
10-12, 21, 115, 116, 189, 190, 191,
198, 270
- Stocks and bonds, taxation of, 144,
145, 147, 160, 256, 257, 258; assess-
ment of, 194
- Stone, John Y., 74, 86

- Stone, William M., recommendation of, 16, 393, 396
- Stow, W. A., 64
- Subsidies to railroads, 17, 18, 38, 43
- Supervisors, Board of, statement prepared by, 83
- Supreme Court of Iowa, decision of, relative to railway taxation, 62, 84, 102-114, 117, 200
- Swamp lands, release of, by railroads, 31
- Switzerland, taxation in, 251
- Tax commission, need of, 184, 206, 215, 216, 239, 272, 273; functions of, 221, 222, 224, 273; administration by, 230; results of work of, 234, 238, 239, 240, 241; assessment of railroads by, 244; assessment of corporations by, 246
- Tax commission movement, 216-220
- Tax commissions, bibliography of, 291-300; laws creating, 300-364
- Tax distribution, need of equitable system of, 212; reference to, 273, 274
- Tax inquisitors, operation of, 251
- Tax laws, necessity of enforcing, 13
- Taxation, low rate of, in early Iowa, 10; demand for equalization of, 17; failure to distinguish between assessment and, 32, 33, 75; desire for uniformity in, 36; inequalities in, 40, 47, 48, 58, 162, 201; distinction between assessment and, 52, 54, 55, 113; class uniformity in, 53; attitude of political parties toward, 56; unjust method of, 68; form of, desired by people, 75; method of, favored by railroads, 75; demand for local, 76; different methods of, 141, 142; principle underlying uniformity in, 142; special problem in, 189; basis of, 210; importance of problem of, 213; lack of interest in, 214; methods of solving problems of, 214-216; method of remedying inequalities in, 226-241; slowness of reform in, 271, 272; basis for reform in, 272-274
- Taxes, semi-annual payment of, 183; measure of ability to pay, 186; administration for collection of, 223, 224; difficulty in securing payment of, 272; distribution of, to counties, 19, 20, 21; amount of, paid by railroads, 21; increase in amount of, from railroads, 23; amount of, for State purposes, 122
- Teachout, H. E., 430
- Telegraph companies, taxation of, 205, 242, 246; disposition of taxes from, 255; assessment of, 257
- Telephone companies, taxation of, 205, 242, 246; disposition of taxes from, 255; assessment of, 257
- Tennessee, railway taxation in, 143, 167; insurance taxation in, 267; county assessor system in, 368; reference to, 447; average assessment in, 450
- Terminals, attitude of railroads toward, 37; taxation of, 61, 66, 76, 134, 135, 138; value of, diffused along line, 77, 83, 128, 131, 136; right of cities to tax, 103, 107, 108, 114, 117, 118, 123, 133; failure of local assessment of, 245
- Texas, railway taxation in, 143, 152, 167; reference to, 218, 447; insurance taxation in, 267; tax commission in, 298; county assessor system in, 368; average assessment in, 450
- Thayer, 132
- Toronto (Canada), meeting of tax association at, 447
- Townsend, T. C., 365
- Township trustees, powers and duties of, 181
- Townships, assessment by, 175, 177, 179, 182, 223

- Tracy, John F., 394
- Transportation, problems of, in early Iowa, 3; route of, to West, 4, 5; cost of, 5; importance of railroad in, 5; development of means of, 33
- Treasurer of State, levy of railroad taxes by, 14, 20, 53; powers and duties of, 116; report of, 126
- Trewin, James H., 424
- True, F. T., 134, 135, 137, 200
- Two cent fares, 95
- Union County, 118, 119, 120, 121, 126, 131, 132, 406
- Union Pacific Railway, 133, 134, 136, 390
- Unit rule, application of, 60, 131, 135, 136, 201; bill providing for, 64; reference to, 108, 147; definition of, 148, 162
- Utah, railway taxation in, 143, 167; insurance taxation in, 267; county assessor system in, 368; reference to, 447; average assessment in, 450
- Valuation, desire of railroads for uniformity in, 36, 37; basis for, 52, 53, 226-241; State board for, 64; unit rule of, 64, 77, 108; method of, 67, 82, 83, 84, 118, 145, 146, 153-161, 185-189, 198; effort to change plan of, 91-95; power to change, 178; element in making, 257, 258
- Van Buren County, 3, 68
- Van der Zee, Jacob, 4, 389
- Vermont, railway taxation in, 143, 145, 148, 151, 167; reference to, 219; insurance taxation in, 267; tax commission in, 299; average assessment in, 450
- Virginia, railway taxation in, 144, 152, 167; reference to, 225, 447; insurance taxation in, 267; county assessor system in, 368; average assessment in, 450
- Wabash Railway, 133
- Wadena, 127
- Washburn, Mr., arguments by, 40, 41
- Washington, railway taxation in, 144, 167; reference to, 218, 252, 447; insurance taxation in, 267; tax commission in, 299; county assessor system in, 368; average assessment in, 450
- Washington County, 68
- Waucoma, 127
- Webster, Daniel, 18
- West, John P., 50
- West, routes to, 4, 5, 7
- West Union, 127
- Westgate, 127
- West Virginia, railway taxation in, 144, 167; reference to, 218, 240, 365, 447; basis of assessment in, 237-239; increase in assessment in, 239; insurance taxation in, 267; tax commissioner in, 299, 361-364; county assessor system in, 369; average assessment in, 450
- Wilson, James, defense of gross receipts system by, 45
- Wilson, James F., 26
- Winnebago County, 120, 121
- Winona (Minnesota), 156
- Wisconsin, method of securing revenue in, 122; railroad tax rate in, 123, 429, 445; railway taxation in, 144, 147, 152, 153, 154, 155, 159, 160, 167, 168; efficiency of tax commission in, 158; ad valorem tax of, 160, 161; reference to, 165, 218, 223, 225, 259, 260, 270, 273, 438, 444, 447; basis of valuation in, 227-235; supervisor of assessment in, 229; State and local assessments in, 234; taxation of corporations in, 246; inheritance taxation in, 262, 263, 264; insurance taxation in, 267; tax commission in, 300, 302-308; assessment of railways in, 441; change in sys-

- tem of railway taxation in, 442-444; average assessment in, 450
- Wisconsin River, 5, 389
- Withrow, H. F., 40
- Wolf, W. P., 51, 52
- Woolson, T. W., 32
- Wright, Carroll, 426, 427
- Wright County, 120, 121
- Wyoming, railway taxation in, 144, 167; reference to, 218, 447; insurance taxation in, 267; tax commission in, 300; county assessor system in, 369; average assessment in, 450

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